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Affirmed
Bradley

Field

Jun. 15. 1880

Salvadore

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1016.

RICHARD MONTGOMERY AND JOHN S. LENG AND JONATHAN OGDEN, AS LENG & OGDEN, APPELLANTS,

vs.

SILAS W. SAWYER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 23, 1879.

Bradley

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1 *Bill of complaint.—Filed February 27th*, 1877.

UNITED STATES OF AMERICA.

Circuit court of the United States in and for the fifth judicial circuit and district of Louisiana.

SILAS W. SAWYER
vs.
RICHARD R. MONTGOMERY ET AL. } No. 8116.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Silas W. Sawyer, a resident of the parish of Plaquemines, and a citizen of the State of Louisiana, brings this his bill of complaint against Richard R. Montgomery, a resident of Philadelphia and a citizen of the State of Pennsylvania, and Leng and Ogden, a commercial firm domiciled in the State of New York, composed of John S. Leng and Jonathan Ogden, both of whom are citizens of the State of New York, and J. R. G. Pitkin, United States marshal for the district of Louisiana;

2 and thereupon your orator complains and says:

1. That he is the possessor and purchaser, in good faith, of a certain tract of land, with all the improvements thereon, and all rights, ways, privileges, & appurtenances thereunto belonging, situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, formerly cultivated as a sugar plantation, known as the "New Hope Plantation," and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four arpents front on said river by forty arpents in depth, bounded above by the plantation of Octave Reggio, and below by the lands of René Sarpy, together with all the buildings thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and carts, and all other appurtenances thereto belonging or appertaining.

2. That your orator purchased said property at a sale made by the sheriff of the parish of Plaquemines, on the sixth day of March, 1875, by virtue of a writ of seizure and sale to said sheriff directed by the honor-

3 able the second judicial district court of Louisiana in and for the parish of Plaquemines, at the suit of James E. Zunts vs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and as tutrix, et als., numbered 2270 of the docket of said court.

3. That said sale was recorded according to law in the clerk's office of the aforesaid court and in the conveyance book of the recorder of the parish of Plaquemines; all of which will more fully appear from the sheriff's act of sale to your orator, hereto annexed as part hereof and marked Exhibit A, and from the certificate of said clerk and the recorder of the parish of Plaquemines attached to Exhibit A.

4. That the said order of seizure and sale in the suit of James E. Zunts vs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and as tutrix, et als., was issued to enforce the balance due on a judgment in favor of said Zunts, rendered in the suit of William and Haywood Stackhouse vs. James E. Zunts, by the honorable the fifth district court for the parish of Orleans, numbered 18850 of the docket of said court, all of which will more fully and at large appear from

4 the petition and order in the suit of said Zunts vs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and as tutrix, et

als., a duly certified copy of which is herewith filed as part hereof and marked Exhibit B.

5. Further your orator says that the said judgment in the suit of William and Haywood Stackhouse vs. James E. Zunts was duly recorded in the books of the recorder of mortgages of the parish of Plaquemines, on the 17th day of April, 1872, as will more fully and at large appear from the certified copy of said judgment and the certificate of the recorder of the parish of Plaquemines, herewith filed as a part hereof, marked Exhibit C, and that said recordation of the judgment operated as a judicial mortgage upon all the property of said William and Haywood Stackhouse situated in the parish of Plaquemines, among which property was the aforesaid Cedar Grove plantation or New Hope plantation, so as aforesaid purchased by your orator.

6. Your orator says that the said last-mentioned judgment was on appeal affirmed by the honorable the supreme court of the State of Louisiana; that pending said appeal Haywood Stackhouse died,
5 and his widow, Sarah F. Brooks, natural tutrix of his and her minor children, and Lillia A. Stackhouse Bryant, wife of J. W. Bryant and daughter of said Stackhouse, became parties to said suit; all of which will more fully appear from the documents duly certified, herewith filed as part hereof as Exhibit D & E.

7. And now your orator shows unto your honors that the said Richard R. Montgomery and the commercial firm of Leng and Ogden, pretending to be the holders and owners of two certain notes, dated at New Orleans, February 6, 1873, drawn by Sarah F. Stackhouse, in her own right, and as natural tutrix of her minor children, Herbert, Mabel, Blanche, and Maud Stackhouse, and as the attorney in fact of Lillia A. Stackhouse Bryan, one note being for the sum of forty-five hundred and sixty-two dollars and one for the sum of five thousand dollars, both payable twelve months after date, and each bearing interest at the rate of eight per cent. per annum; to secure the prompt payment of which notes the said Sarah F. Stackhouse, in her aforesaid capacities, mortgaged and hypothecated in favor of Ernest & Co., and all legal
6 holders of said notes, the aforesaid New Hope plantation, now known as "Cedar Grove plantation," "with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining," have caused to be issued out of this honorable court, in the suit of Montgomery et als. vs. Stackhouse et als., No. 8028 of the docket of said court, an order of seizure and sale, commanding the marshal of the district of Louisiana to seize and sell the undivided half of the said plantation, and that the said marshal has seized and will proceed to advertise and sell the undivided half of said plantation, to the great injury, wrong, and oppression of your orator, unless restrained by your honors; all of which will more fully appear from the records of said suit of Montgomery et als. vs. Stackhouse et als., herein referred to.

8. Further, your orator says that the said mortgage is null and void, because the said Sarah F. Brooks, widow of Haywood Stackhouse, was without power or authority in law to mortgage the property of the succession of Haywood Stackhouse, her deceased husband, without
7 an order of the parish court, granted after the advice and consent of a family meeting, and could then only mortgage for the purpose, consideration, and amount authorized by said family meeting; that the pretended mortgage given to secure the notes alleged to be held and owned by the defendants was given to secure an alleged in-

debtedness of fifteen thousand dollars of the succession of Haywood Stackhouse to Ernest & Co., whereas the truth is that the family meeting authorized and advised a mortgage upon said plantation only for the purpose of securing supplies and means necessary for the working of said plantation, said supplies and means to be furnished by said Ernest & Co., as will more fully appear from the duly certified copy of said act of mortgage and proceedings of said family meeting, herewith filed as a part hereof, marked Exhibit F; that said mortgage, if it was ever valid and good, was valid and good only for the amount of, and to the extent of, the value of the supplies and means furnished by said Ernest & Co. for the working of said plantation for the year 1873.

8 9. Your orator says that he is informed and believes that the said firm of Ernest & Co. declined to furnish supplies and means sufficient to cultivate said plantation for the year 1873; that the supplies furnished by them fell far short of the necessities of the plantation and of the amount claimed by the complainants in the suit of Montgomery et al. vs. Stackhouse et als., as the holders and owners of the aforesaid notes, and of the amount for which said mortgage was given, whereby the said Sarah F. Brooks, tutrix, was compelled to apply to other commission merchants, to wit, Fernandez & Co., for funds to cultivate said plantation for the year 1873; and further, your orator says, as he is informed and believes, that for all supplies furnished by said Ernest & Co. they were more than repaid by the sugar, and molasses, and rice, raised upon the plantation in the year 1873, consigned to the said Ernest & Co., by them received and sold, and the proceeds appropriated by them, and by the price of certain machinery contained in the sugar-house, to wit, an open steam train, paid to Ernest &

9 Co., amounting to three thousand dollars, which amount was paid to your orator, and should have been credited to said mortgagors in reduction of any indebtedness of theirs to said Ernest & Co. on account of any supplies furnished by them during the year 1873.

10. Your orator says he is informed and believes that the notes of which the said Richard R. Montgomery and Leng and Ogden claim to be the holders and owners, were, at the time of the institution of said suit of Montgomery et als. vs. Stackhouse et als., and are now in law the property of Ernest & Co., and did not pass into the actual possession of said holders until after maturity.

11. Your orator shows further that the said mortgage is absolutely null so far as it affects any interest in the property pretended to be mortgaged, owned, or pretended to be owned, by Mrs. Lillia A. Stackhouse Bryant, because she was at the time of the execution of said pretended mortgage and is now a married woman, and whatever interest she may have had in said plantation was paraphernal, and the

10 formalities required by articles 127 and 128 of the civil code of the State of Louisiana to authorize a married woman to mortgage or encumber paraphernal or dotal property, as your orator is informed and believes, were never complied with.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; that is to say:

1. Whether it is not a fact that the complainant, Silas W. Sawyer,

purchased said New Hope or Cedar Grove plantation at sheriff's sale on the sixth day of March, 1875.

2. Whether it is not a fact that the judgment of William and Haywood Stackhouse was recorded on the 17th day of April, 1872, in
11 the books of the recorder of the parish of Plaquemines.

3. Whether it is not a fact that the pretended mortgage granted by Sarah F. Brooks, widow of Haywood Stackhouse, natural tutrix and attorney in fact of Lillia A. Stackhouse Bryant, was executed and recorded subsequent to the recordation of said judgment of William and Haywood Stockhouse vs. James E. Zunts.

4. Whether it is not a fact that the said Sarah F. Brooks was by said family meeting and by the parish court of the parish of Plaquemines authorized to mortgage said New Hope or Cedar Grove plantation only for the sum of fifteen thousand dollars, and only to secure supplies for the year 1873.

5. Whether it is not a fact that said Ernest & Co. refused to furnish supplies to the amount of fifteen thousand dollars, or to an amount sufficient to cultivate said plantation, during the year 1873.

6. Whether it is not a fact that the said Ernest & Co. were repaid for all supplies by them furnished to the said plantation during the year 1873, or subsequent to the execution of said mortgage.

12 7. Are not Ernest & Co. now the legal owners of the notes sued on in the suit of Montgomery et al. vs. Stackhouse et als., No. 8028 of the docket of the United States circuit court, and that the said notes did not pass into the actual possession of Richard R. Montgomery and Leng and Ogden until after maturity.

Your orator prays that he may be decreed to be the purchaser in good faith and legal owner and proprietor of the hereinbefore described Cedar Grove or New Hope plantation, together with all the improvements thereon, and all rights, ways, privileges, and appurtenances thereunto belonging, and his title thereto established and confirmed by a decree of this honoabale court; that the said pretended mortgage granted by said Sarah F. Brooks, widow of Haywood Stackhouse, and as natural tutrix and attorney in fact of Lillia A. Stackhouse Bryant, be declared null and void and of no effect as against the rights of your orator, and that your orator may have such further and other relief in the premi-
13 ses as the nature of the case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of injunction against the said Richard R. Montgomery and Leng and Ogden, and J. R. G. Pitkin, United States marshal for the district of Louisiana, defendants, their agents and attorneys, commanding them to desist from proceeding under said order of seizure and sale, and from making said advertisement and sale complained of; and your orator further prays for an injunction pendente lite, and for the issuance of a restraining order restraining said defendants from proceeding in the premises until an application for an injunction can be heard.

And may it please your honors to grant unto your orator writs of subpœna, issuing out of and under the seal of this court, to be directed to said defendants, commanding them and each of them by a certain day and under a certain penalty to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree as
14 may be made against them.

(Signed) HERMAN B. MAGRUDER,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
District of Louisiana:

Silas W. Sawyer, being sworn, says that he is the complainant in the foregoing bill named, and has read the same and knows the contents thereof; that the said bill is true of his own knowledge, except as to those matters which are stated herein to be on his information and belief, and as to these he believes it to be true.

(Signed) S. W. SAWYER.

Sworn to and subscribed before me this 26th day of February, 1877.

(Signed) F. B. VINOT,
U. S. Comm'ner.

NOTE.—The defendant, Richard R. Montgomery, and the defendants Leng and Ogden, or one of the firm, are required to answer the interrog atories numbered respectively 1, 2, 3, 4, 5, 6, 7,

Order.

15 Let restraining orders issue herein as prayed for and by the agreement on file.

New Orleans, February 27th, 1877.

(Signed) EDWARD C. BILLINGS,
Judge.

Exhibit A.—Filed February 27th, 1877.

Whereas I, Oscar B. Sarpy, sheriff of the parish of Plaquemines, by virtue of a writ of seizure and sale No. 2270 to me directed by the honorable the second judicial district court of Louisiana, in and for the parish of Plaquemines, at the suit of James E. Zuntz vs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and as tutrix, et als., No. 2234 of the docket of the said court, after having fulfilled and complied with all the previous legal requisites, did seize the following described property, to wit:

A a certain tract of land, with all the improvements thereon, and all rights, ways, privileges, and appurtenances thereunto belonging, situated in the parish of Plaquemines, in this State. formerly cultivated as
16 a sugar plantation, known as the "New Hope Plantation," and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four arpents front on said river by forty arpents in depth; bounded above by the plantation of Octave Reggio, and below by lands of René Sarpy, together with all the buildings thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and carts, and all other appurtenances thereto belonging or appertaining.

Together with three hundred and thirty-five shares of the mortgage stock of the Citizens' Bank of Louisiana, of $100 each, secured by mortgage on the above described property. The 335 shares are reduced to 313 for the calculations of dividends or contributions, but the mortgage secures the 335 original shares.

And after having given due and legal notice to the said defendants of the said seizure, in the manner pointed out by law, I advertised said before described property for sale after the expiration of the legal delay from the time of said notice, to wit, January 30, 1875, by adver-
17 tisements composed in English, announcing the sale to take place at the court-house of this parish at Pointe à la Hache, on the sixth day of March, 1875, at 11 o'clock a. m. Said advertisements were

inserted and published in English in the Plaquemines Sentinel, the official journal of this parish, from the said thirtieth day of January to the day of sale, being full thirty-six days from the date of the first notice given in said newspaper; said advertisements were inserted and published in said newspaper on the 23, 30 Jan'y; 6, 13, 20, 27 Feb., and 6 March, 1875.

And having further complied with and performed all the additional previous legal requisites, and after the before described property having been duly appraised, did expose the same at public sale at auction, according to law, at the said court-house of this parish at Pointe à la Hache, on the sixth day of March, 1875, at 11 o'clock a. m.

And at the time and place of sale I did read verbatim, and in a loud and audible voice, the certificate of the recorder of mortgages, in and for the parish of Plaquemines, delivered on the day of the sale, and
18 by which certificate it appears there are no other mortgages standing in the names of William and Haywood Stackhouse and recorded against the before described property than the following:

1°. The one granted by James Erwin in favor of the Citizens' Bank of Louisiana, as per act of mortgage executed before Theo. Seghers, not. pub., in New Orleans, on the 3d day of July, 1839, to secure the payment of one hundred and fifty-three shares of $100 each, forming, together, fifteen thousand three hundred dollars of the capital stock of said bank, and also to secure all loans that may be made on said shares, as well as to secure the payment of the principal & interest of the loan that has been raised or to be raised to form the capital of said bank, said obligation to bear interest at the rate of 10% per annum after maturity, if not punctually paid. Recorded July 5th, 1839.

By virtue of an act of sale by James Erwin to Andrew Knox, before Chs. Boudousquié, not., in N. Orleans, on the 12th March, 1845. Andrew Knox has taken the reversion of the above mortgage. Recorded March 17th, 1845.

19 By virtue of an act of sale by Payne & Harrison to William & Haywood Stackhouse, passed before Adolphe Mazureau, not. pub., in N. Orleans, on the 15th Oct., 1856. William and Haywood Stackhouse have assumed the payment of the above mortgage. Recorded April 23th, 1875.

2°. The one granted by James Erwin in favor of the Citizens' Bank of La., per act before Theodore Seghers, notary, in N. Orleans, on the 1st Aug., 1839, to secure the payment of eighteen thousand two hundred dollars in the capital stock of said bank, being the amount of 132 shares of $100 each, as well as any loan which the said Erwin may obtain on his stock, and also to secure the payment of the principal & interest of the loan raised or to be raised to form the capital of said bank, and finally to secure all interest according to the charter of said bank, said obligation to bear interest at ten per cent. per annum until paid. Recorded Aug. 2d, 1839.

By virtue of an act of sale by James Erwin to Andrew Knox, before Chs. Boudousquié, not., in N. Orleans, dated March 12th, 1845. Andrew Knox has assumed the payment of said mortgage. Recorded March 17th, 1845.

20 By virtue of an act of sale by Payne & Harrison to William and Haywood Stackhouse, passed before Adolphe Mazureau, not., in N. Orleans, on the 15th Oct., 1856. They have assumed the payment of the said mortgage. Recorded April 28th, 1875.

3°. The one granted by William and Haywood Stackhouse in favor of Payne & Harrison and of the Citizens' Bank of La., as per act

before A. Mazureau, not., in N. Orleans, on the 15th Oct., 1856, to secure the payment of the sum of one hundred and fifteen thousand dollars; which mortgage is now reduced to the debt due the Citizens' Bank as follows: Five thousand one hundred and seventy-three $\frac{25}{100}$ dollars, being the amount in principal and interest due to the said bank on the 9th Oct. 1856, as a balance of loan on three hundred & thirteen shares in the capital stock of said bank and for contribution in the stock, which said sum of $5,173\frac{25}{100}$, the said Stackhouse agreed to pay in the following manner, viz, the of $1,848\frac{25}{100}$, being the amount due on the
21 9th Oct., 1856, for past instalments, interests & contributions, and for the balance the said Stackhouses have subscribed a note of $335, payable on 1st May, 1857, with 8% interest after maturity, which said note is for contribution on 335 shares of the capital stock of said bank, now reduced to 313 shares, which are to be transferred by said Payne & Harrison to William & Haywood Stackhouse, and which are secured by mortgage on the plantation and slaves above described.

4. The legal mortgage existing against Mrs. Sarah F. Brooks, widow of Haywood Stackhouse, in favor of her children as their tutrix, per clerk's certificate of inventory dated June 2d, 1870, amounting to $127,314. Recorded June 10th, 1870.

In faith whereof I hereunto set my hand and affix the seal of my office this 28th April, A. D. 1875.

[L. S.] (Signed) C. V. THIBAUT,
Recorder.

When Silas W. Sawyer, of the parish of Plaquemines, being the highest and last bidder, the said before described property was adjudicated to the said Silas W. Sawyer for the price and sum of six thousand six hundred and seventy dollars. Terms: Cash on the spot.

22 And in compliance therewith and by order of James E. Zuntz, the seizing creditor, the sheriff is dispensed from requiring from the purchaser, S. W. Sawyer, the balance of the adjudication coming to him, plaintiff, in execution, after satisfying the taxes and costs, &c., as the same will be settled satisfactorily between the plaintiff in execution and the purchaser; the purchaser to assume the mortgage existing on the said described property in favor of the Citizens' Bank of Louisiana to secure the payment of the three hundred and thirty-five shares of one hundred dollars each, as per mortgage act executed by Adolphe Mazureau, notary, in New Orleans, on the 15th October, 1856, granted by William & Haywood Stackhouse in favor of the Citizens' Bank of La., and of Payne & Harrison to secure the payment of the sum of one hundred and fifteen thousand dollars, which mortgage is now reduced to five thousand one hundred and seventy-three $\frac{25}{100}$ dollars.

23 And in compliance with said adjudication, the said Silas W. Sawyer has paid the State and parish taxes due and payable by the said New Hope plantation, as per tax bills dated December 7th, 1874, for taxes due for the years 1867, 1871, 1872, and 1873, recorded December 8th, 1874, amounting to the sum of—

Three thousand two hundred and sixty $\frac{85}{100}$ cents	$3,260 85
Clerk's costs	19 60
Printing	35 00
Sheriff's costs & keeping	167 75
Together	$3,483 20

And the balance, three thousand one hundred eighty-six $\frac{80}{100}$ the said purchaser retaining in his hands as per agreement & consent of plaintiff in execution above mentioned 3,186 80

$6,670 00

Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such case made and provided, do sell and transfer the said before-described property to the said Silas W. Sawyer, and all the rights and titles which the said defendants had in or to the said before-described property, to have and to hold the same to the said Silas W. Sawyer, his heirs and assigns, forever.

24 In witness whereof I have hereunto signed my name in the parish of Plaquemines, in the State of Louisiana, this 28th day of April, in the year one thousand eight hundred and seventy-five, and the ninety-ninth year of the Independence of the United States of America.

(Signed) T. LEONARD,
D'y Sheriff of the Parish of Plaquemines.

Recorded in book 20, No. 3250, fol. 197 et seq., of conveyances, parish of Plaquemines, this 2d day of July, 1875.

[L. S.] (Signed) C. V. THIBAUT,
Recorder.

Recorded in book B of sheriffs' sales, folios 257, 258, 259, & 260, parish of Plaquemines, this 3d day of July, A. D. 1875.

[L. S.] (Signed) D. A. THIBAUT, *D'y S.*

(Endorsed:) Exhibit A. No. 8116. U. S. circuit court. Filed Feb. 27th, 1877. F. B. Vinot, d'y cl'k.

Filed before me 20th April, 1878.

FRANCIS B. LEE,
Spec. Ex.

25 Filed May 23d, 1878.

F. B. VINOT,
D'y Clerk.

April 28th, 1875.—Sale by the sheriff parish of Plaquemines to Silas W. Sawyer the New Hope Plantation.

Exhibit B.—Filed February 27th, 1877.

Second judicial district court, parish of Plaquemines.

JAMES E. ZUNTZ
vs.
SARAH F. BROOKS, WIDOW OF H. STACKHOUSE, in her own right and as tutrix et als. } No. 2270.

Petition, affidavit, and acts for seizure and sale.—Filed January 20th, 1875.

To the honorable the judge of the second judicial district court in and for the parish of Plaquemines.

The petition of James E. Zuntz, who resides in the parish of Orleans, respectfully shows:

26 That in the case of W. & H. Stackhouse vs. James E. Zuntz, No. 906 of the docket of this honorable court, and numbered

18850 of the docket of the fifth district court for the parish of Orleans, judgment was rendered on the 20th day of February, 1872, and signed on the 5th day of March, 1872, in favor of your petitioner, and ordering that the injunction herein issued "be dismissed with costs, and the said James E. Zuntz do have and recover of plaintiffs, William Stackhouse and Haywood Stackhouse, and the surety on the injunction bond in solido twenty per cent. damages on the amount of the judgment therein enjoined, together with eight per cent. interest, as allowed on the order of seizure and sale."

That said judgment was for the sum of fifty thousand dollars, and four thousand one hundred and sixty-six $\frac{66}{100}$ dollars, interest thereon accrued at 8 % from February 1st, 1866, to 15th February, 1867, the date of the issuance of said injunction, making the total damages allowed ten thousand eight hundred and thirty-three $\frac{66}{100}$ dollars.

27 That on the 17th day of April, 1872, your petitioner caused said judgment to be recorded in the office of the recorder of this parish, all of which will more fully appear by a duly certified copy of said judgment herewith filed and made a part of this petition.

That by the inscription of said judgment in the office of the parish recorder a judicial mortgage was created in favor of your petitioner against all the property belonging to said William Stackhouse and heirs of Haywood Stackhouse, who had, on the 31st May, 1871, been made parties to said suit by the honorable the supreme court of this State, as will more fully appear by a copy of said order herewith filed as part hereof.

That said William Stackhouse and Sarah F. Brooks, widow, in community of Haywood Stackhouse, and natural tutrix of her minor children, Herbert, Blanche, Maud, and Mabel Stackhouse, and Lilla Stackhouse, wife of J. W. Briant, duly authorized by her said husband, all heirs and legal representatives of said Haywood Stackhouse,

28 took an appeal from said judgment, which was subsequently affirmed by the honorable the supreme court of this State, all of which will more fully appear by reference to the proceedings and judgment in said suit of William and Haywood Stackhouse vs. James E. Zuntz, No. 906 of the docket of this hon. court, here referred to and made part of this petition.

That among the other property belonging to said William Stackhouse and the heirs of said Haywood Stackhouse, above mentioned and named at the time of the inscription of said judgment in the recorder's office of this parish, and specially affected by the judicial mortgage thereby created, was the following-described property, to wit:

1°. A certain tract of land, with all the improvements thereon, and all the rights, ways, privileges, and appurtenances thereto belonging, situate in the parish of Plaquemines, in this State, known as the Moliere tract, on the right bank of the Mississippi River, about twenty-

29 four miles below the city of New Orleans, and bounded above by the lands of Dr. D. R. Fox and below by lands formerly of William F. Pratt, now known as Sarah plantation, and measuring five (5) arpents front on the Mississippi River by forty (40) arpents in depth, acquired by W. & H. Stackhouse by purchase from James P. Watters, by act passed before Joseph Cohn, notary public of New Orleans, on 10th Sept., 1869, herewith filed as part hereof.

2°. A certain tract of land, situate, lying, and being in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, and cultivated as a sugar plantation, known as the New Hope plantation, and it is at a distance of about twenty-three miles below the city

of New Orleans, measuring thirty-four and a half arpents on said river by forty arpents in depth, bounded above by the plantation of Octave Reggio, and below by the lands of René Sarpy, together with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and carts, and all other appurtenances thereto belonging or appertaining, likewise acquired by W. & H. Stackhouse, by purchase from James T. Watters, as per act before Joseph Cohn, a notary public, in New Orleans, on the 10th of January, 1868, herewith filed as part hereof.

That subsequent to the inscription of petitioners, said judgment above referred to, viz, on the 17th day of May, 1872, by act of partition between William Stackhouse and the succession of Haywood Stackhouse, passed before Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, the said "New Hope Plantation" and "Moliere tract" above described fell to the lot and share of the succession of Haywood Stackhouse, and the said William Stackhouse did in said act sell, convey, transfer, assign, and set over unto the said Mesdames Sarah F. Stackhouse and Lilla Bryant, and the said minors, Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse, all his right, title, and interest in and to said property therein allotted and given to the succession and estate of said deceased Haywood Stackhouse; all of which will more fully appear by a copy of said act *of said act* of partition herewith filed as part hereof.

That your petitioner has demanded of Mrs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and as tutrix of the minors, Herbert Stackhouse, Blanche Stackhouse, Maude Stackhouse, and Mabel Stackhouse, and of Mrs. Lilla Stackhouse, wife of J. W. Bryant, heirs and legal representatives of Haywood Stackhouse, deceased, payment of the above judgment in the case of W. & H. Stackhouse vs. James E. Zuntz, No. 18850 of the docket of the fifth district court for the parish of Orleans, to wit, twenty per cent. (20%) damages on the amount of the judgment herein enjoined, together with (8%) eight per cent. interest as allowed on the order of seizure and sale, which damages amount to the sum of ten thousand eight hundred and thirty-three $\frac{66}{100}$ dollars, as above stated, and petitioner further notified them as third possessors of the above described "Moliere Tract" and "New Hope" plantation, to pay the amount of said judgment or deliver said property, upon which petitioner has a judicial mortgage, resulting from the inscription of said judgment in the office of the parish recorder, otherwise petitioner would proceed against them and against said property in the manner pointed out by law.

That notwithstanding said amicable demand and the expiration of more than sixty days since the same was made by your petitioner, the said defendants neglect and refuse to comply, and neglect and refuse to pay said hypothecary debt or to deliver up said property.

Wherefore petitioner prays, the annexed affidavit considered, that a writ of seizure and sale do issue herein; that after due notice to Mrs. Sarah F. Brooks, widow of Heywood Stackhouse, in her own right and as tutrix of the minors Herbert Stackhouse, Blanche Stackhouse, Maude Stackhouse, and Mabel Stackhouse, and to Mrs. Lilla Stackhouse, wife of John W. Bryant, heirs and legal representatives of Heywood Stackhouse, deceased, the following described property, to wit:

A certain tract of land, with all the improvements thereon, and all rights, ways, privileges, and appurtenances thereto belonging, situate in the parish of Plaquemines, in this State, known

as the "Moliere tract," on the right bank of the Mississippi River, about twenty-four miles below the city of New Orleans, bounded above by lands of Dr. D. R. Fox, and below by lands formerly of William F. Pratt, now known as the Sarah plantation, and measuring five (5) arpents front on the Mississippi River, by forty arpents in depth, acquired by W. & H. Stackhouse by purchase from James T. Watters; and also another "certain tract of land situate, lying, and being in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, and cultivated as a sugar plantation, known as the 'New Hope' plantation, and it is at a distance of about twenty-three (23) miles below the city of New Orleans, measuring thirty-four and a half arpents front on the said river, by forty arpents in depth, bounded above by the plantation of Octave Reggio, and below by lands of Réné Sarpy, together with all the buildings and improvements thereon—sugar-house ma-
34 chinery, agricultural implements, horses, mules, cattle and carts, and all other appurtenances thereto belonging or appertaining," be seized, and after due advertisements sold by the sheriff of this parish for cash, and that out of the proceeds thereof petitioner be paid said hypothecary debt due him, to wit, the sum of ten thousand eight hundred and thirty $\frac{66}{100}$ dollars ($10,833.66), with all costs of suit, and for general relief.

(Signed) E. HOWARD McCALEB,
Attorney for James E. Zuntz.

James E. Zuntz, being duly sworn, deposes and says that all the alle gations and statements in the foregoing petition are true; that said sum of ten thousand eight hundred and thirty-three $\frac{66}{100}$ dollars, for which he demands the seizure of the above described hypothecated property, is really due to him, and that he has in vain demanded payment from the defendants, his debtors, more than thirty (30) days previous to his bringing this suit.

(Signed) JAMES E. ZUNTZ.

Sworn to and subscribed before me this 14th day of January,
35 A. D. 1875.

[L. S.] (Signed) JOHN LEMONNICE,
3rd Justice of the Peace for the Parish of Orleans.

Order for a writ of seizure & sale.

Let a writ of seizure and sale issue herein as within prayed for, and according to law.

In chambers, January 15, 1875.

(Signed) DOW. A. PARDEE,
Judge 2d Jud'l Dist., La.

Copy of judgment rendered by the 5th district court, parish of Orleans.—Filed January 20th, 1875.

I hereby certify that on the 20th day of February, 1872, judgment was rendered in this court in the following entitled suit in the words and figures following, to wit:

W. & H. STACKHOUSE
vs. } No. 18850.
JAMES E. ZUNTZ.

In this case, for the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged,
36 and decreed that there be judgment in favor of defendant; that the injunction herein be dismissed with costs; and the said defendant, James E. Zuntz, do have and recover of plaintiffs, William and Heywood Stackhouse, and their surety on the injunction-bond in solido, twenty per cent. damages on the amount of the judgment enjoined, together with eight per cent. interest, as allowed on the order of seizure and sale.

It is further ordered that the claim for attorney's fees herein be dismissed.

Judgment rendered February 20th, 1872.
" signed March 5th, 1875.
(Signed) CHARLES LEAUMONT, *Judge.*

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, on this sixth day of April, in the year of our Lord one thousand eight hundred and seventy-two, and the 96th year of the Independence of the United States.
(Signed) PHILIP POWER, JR.,
Deputy Clerk.

37 Recorded parish of Plaquemines, at the request of Tho. B. Lee, this 17th day of April, A. D. 1872.
(Signed) C. V. THIBAUT,
Recorder.

A true copy.
[L. S.] (Signed) D. A. THIBAUT,
D'y Recorder.

Copy of judgment rendered by the 5th district court parish of Orleans, marked A.—Filed February 20th, 1875.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

I hereby certify that on the 20th day of February, A. D. 1872, judgment was rendered in this court in the above entitled suit in the words and figures following, to wit:

W. & H. STACKHOUSE
vs. } No. 18850.
JAMES E. ZUNTZ.

In this case for the reasons assigned in the written opinion of the court, this day delivered and on file, it is ordered, adjudged and decreed that there be judgment in favor of defendant, that the injunc-
38 tion herein be dismissed with costs, and that the said defendant, James E. Zuntz, do have and recover of plaintiffs, William and Heywood Stackhouse, and their surety on the injunction bond in solido, twenty per cent. on the amount of the judgment herein enjoined, together with eight per cent. interest as allowed on the order of seizure and sale.

It is further ordered that the claim for attorney's fees herein be dismissed.

Judgment signed March 5, 1872.

(Signed) E. NORTH COLLUM, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans on this day of January, in the year of our Lord one thousand eight hundred and seventy-five, and the ninety-ninth year of the Independence of the United States.

(Signed) PAUL T. ABADIE,
Deputy Clerk.

39 *Motion & order supreme court suggesting death & making parties May 31st, 1870.—Filed January 20th, 1875.*

Supreme court of the State of Louisiana.

TUESDAY, *May 31st*, 1870.

The court was duly opened, present their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 2020.

and

JAMES E. ZUNTZ
vs.
W. & H. STACKHOUES. }

On motion of Randell Hunt and L. Madison Day, of counsel for James E. Zuntz, appellee in this cause, and on suggesting to the court that Haywood Stackhouse, one of the appellants in said cause, has died since this appeal was taken, that his succession has been opened in the parish court for the parish of Plaquemines by his widow, Sarah F. Brooks, who has been appointed and qualified in said court as natural tutrix of his and her minor children, that the said Sarah F. Brooks; resides in

40 the that the affidavit required by the rules of this honorable court has been made and that the same is now on file in this court: It is ordered by the court that an order do issue summoning the said Sarah F. Brooks, widow of H. Stackhouse, one of the appellants in this cause, and tutrix of her minor children, to make herself a party to this cause in her capacity of tutrix of her minor children and representing the succession of her late husband H. Stackhouse, within twenty five days from the receipt of said summons.

I hereby certify the foregoing to be a true and faithful extract from the minutes of the day, month and year first above written.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court at the city of New Orleans, this fourteenth day of January, in the year of our Lord one thousand eight hundred and seventy-five.

(Signed) JNO. W. HOWELL, *Clerk.*

I, the undersigned deputy clerk, do hereby certify, that from
41 the records and docket on file in the clerk's office of the supreme

court of the State of Louisiana, it appears that the above and foregoing motion and order were duly served by the sheriff on the parties therein named, to wit, Mrs. Sarah F. Brooks, in her own right and as tutrix of her minor children and representing the succession of her late husband H. Stackhouse, and the return of the sheriff was filed in the clerk's office of this court showing said service on the 28th day of June, A. D. 1870, but which return of service I have been unable to find, after due and diligent search among the records and papers in this office, the same having been lost or mislaid.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court at the city of New Orleans, this fourteenth day of January, anno Domini 1875.

(Signed) JNO. T. JULIAN,
D'y Clerk.

Motion & bond for appeal.—Filed January 20th, 1875.

42 5th district court.

W. & H. STACKHOUSE *vs.* JAMES E. ZUNTZ ET ALS. } No. 18850.

On motion of C. Roselius and Alfred Philips and Hornor & Benedict, of counsel for William Stackhouse, Sarah H. Brooks, widow in community of Heywood Stackhouse, dec'd, and natural tutrix of her minor children, Herbert, Blanche, Maud, and Mabel Stackhouse and Lilla Stackhouse, wife of J. W. Bryant, duly authorized and assisted by her husband and legal heirs of James T. Watters, dec'd, to wit, Henrietta Watters, wife of William Stackhouse, and by her husband duly assisted and authorized, Mrs. Widow Mary Upton, widow of Wheelock S. Upton, dec'd, William H. Watters, and on suggesting to the court that said appearers and movers have been informed and believe that there is error to their prejudice in the final judgment rendered in the above entitled case by this hon. court on the 20th February, 1872, and signed on the 5th March, 1872, and that they are desirous of appealing
43 suspensively from the same to the supreme court of the State, and showing that the clerk requires time till the third Monday of April next to make the transcript of appeal, it is ordered that a suspensive appeal be accorded to said appearers and movers from said final judgment to the supreme court of Louisiana, the same to be therein returnable on the 3d Monday of April, 1872, upon said appearers giving bond and security conditioned according to law in the sum of thirty thousand dollars.

A true copy.

Clerk's office, 14 Jan'y, 1875.

[L. S.] (Signed) PAUL T. ABADIE,
D'y Clk.

Bond of appeal.—Filed January 20th, 1875.

Know all men by these presents that we, William Stackhouse, Sarah F. Brooks, widow in community Haywood Stackhouse, and natural tutrix of her minor children, Herbert, Blanche, Maud, and Mabel Stackhouse and Lilla Stackhouse, wife of J. W. Bryant, duly authorized
44 and assisted by her husband, and the legal heirs of James T. Waters, to wit, Henrietta H. Waters, wife of William Stackhouse, by him duly authorized, and Mrs. Widow Mary Upton, widow of Wheelock S. Upton, and William H. Watters, as principal, and Henry F. Given for thirty thousand dollars, Lucien J. Doizé for five thousand dol-

lars, Armand Doizé for five thousand dollars, James Byrne for five thousand dollars, William W. Thomas for five thousand dollars, as sureties, are held and firmly bound unto Louis Power, clerk of the fifth district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of forty thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, this 13th day of March, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas the above bounded William Stackhouse, Sarah F. Brooks, widow in community of Heywood Stackhouse and natural tutrix
45 of her minor children, Herbert, Blanche, Maud, and Mabel Stackhouse, wife of John W. Bryant, duly authorized and assisted by her husband, and the legal heirs James T. Watters, to wit, Henrietta A. Watters, wife of Wm. Stackhouse, by him duly authorized and assisted, Mrs. Widow Mary Upton, Widow Wheelock Upton, and Wm. R. Watters, have this day filed a motion of appeal from a final judgment rendered against in the suit of Wm. & H. Stackhouse vs. J. E. Zuntz et als., No. 18850, in the fifth district court of the parish of Orleans, on the 20th day of February, 1872, and signed on the 5th day of March, 1872.

Now, the condition of the above obligation is such that the above bounden William Stackhouse, Sarah F. Brooks, widow in community of Haywood Stackhouse, and natural tutrix of her minor children, Herbert, Blanche, Maud, and Mabel Stackhouse, Lilla Stackhouse, wife of J. W. Bryant, by him duly authorized and assisted, and the legal members of James P. Waters, dec'd, to wit, Henrietta A. Waters, wife of William Stackhouse, by him duly authorized and assisted, Mrs.
46 Widow Mary Upton, widow of Wheelock S. Upton, and William H. Waters, shall prosecute said appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if be cast in the appeal; otherwise that the said Henry F. Given, to the extent of twenty thousand dollars, and the said Lucien Doizé, Armand Doizé, James Byrnes, Wm. H. Thomas, to the extent of fifteen thousand dollars each, shall be liable in their place.

(Signed) WILLIAM STACKHOUSE.
SARAH F. STACKHOUSE,
Widow in Community & Natural Tutrix.
LILLA A. BRYANT.

I authorize my wife.

J. W. BRYANT.
HENRIETTA A. STACKHOUSE.

I authorize my wife.

W. STACKHOUSE.
MARY UPTON.
W. H. WATERS.

Sureties:
HENRY F. GIVEN.
LUCIEN J. DOIZÉ.
ARMAND DOIZÉ.
JAMES BARNES.
WM. H. THOMAS.

A true copy.
Clerk's office, 14th Jan'y, 1875.
[L. S.] (Signed) PAUL T. ABADIE,
D'y Clerk.

47 *Reasons, opinion & decree of supreme court affirming judgment.—Filed January 20th, 1875.*

No. 529.

Supreme court of the State of Louisiana.

CLERK'S OFFICE,
New Orleans, Dec'r 1st, 1873.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 4019.

Appeal from the 5th district court, parish of Orleans.

Mr. Justice WYLY declared the opinion of the court in the words and figures following, to wit:

The plaintiffs enjoined the executory proceedings sued out by the defendant' in their two mortgage notes executed in February, 1865, on the ground that the consideration of said notes was the price of slaves.

The court disposed the injunction with damages and the plaintiffs appeal.

That the plaintiffs would give their notes and mortgage their plantation in February, 1865, for $50,000.00 for the price of slaves is highly improbable.

48 It is still more improbable that Zunts persuaded them, as they allege in their petition, "to give said notes and mortgage by assuring them that long before the maturity of said notes he would sell to them certain slaves," well knowing that he could not do so as slavery had been abolished, and all they required from Zunts in return was his verbal promise to convey said slaves.

In order to escape liability, on the ground that the consideration of the notes was illegal, the plaintiffs must show not merely a preponderance of evidence, it forces itself upon the conviction with the power of demonstration. (Hertz vs. Hilder, 10 A., 199; Denton vs. Erwin, 6 An., 317; Weaver vs. Aufoux, 20 A., 12.) After maturity, considering the evidence in this case, which is voluminous and conflicting, we have come to the conclusion that the plaintiffs have failed to establish their defence with that certainty required by the jurisprudence of this State.

Finding, therefore, as a matter of fact, that the consideration of the notes was not for the price of slaves, it becomes unnecessary to

49 consider the questions of law presented so ably by the learned counsel engaged in this litigation. It is, therefore, ordered that the judgment herein in favor of the defendant be affirmed with costs.

A true copy.
(Signed) JNO. T. JULIAN,
D'y Clerk.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS.

On rehearing.

Mr. Justice MORGAN:

On the 5th March, 1860, at a sale of the succession property of Samuel Packwood, James E. Zunts purchased the Bellechasse plantation and slaves belonging thereto for $250,000.00.

On the 13th January, 1865, Zunts had paid on the purchase price of this plantation $116,488.08; for this balance Zunts had been sued, and the heirs of Packwood were litigating among themselves with regard to the distribution of the proceeds of the sale of this plantation.

On this day, 13th January, 1865, all the heirs of Packwood, Zunts, and W. & H. Stackhouse appeared before Hugh Madden, a notary
50 public, and entered into deed of compromise, sale and reparti-
tion.

In this act is to be found the following extracts:

Whereas a litigation now pending in the second district court of New Orleans, growing out of the partition of the succession of Samuel Packwood in the suit entitled Emily Doisey et als. vs. Theodore J. Packwood et als., numbered 15253, on the docket of suits in the said district court, which embraces a contestation for the distribution of the proceeds of the plantation in the parish of Plaquemines, known as the Bellechasse plantation, which was sold to effect a partition among the heirs of the late Samuel Packwood, to wit, Mrs. Mary A. C. Packwood, has intervened in said litigation and claimed one-half of said proceeds as belonging to the community of acquets and gains existing by the laws of Louisiana between her and the said Samuel Packwood, which litigation is now pending on an appeal before the supreme court of the State of Louisiana:

And whereas another litigation exists and is now pending in
51 the second district court of New Orleans, in which Theodore J. Packwood, acting in his capacity of testamentary executor of the last will and testament of said Samuel Packwood, has brought suit for the unpaid instalments of the price of said Bellechasse plantation against James E. Zunts, the purchaser of the same, against which demand the purchaser of the same, the said James E. Zunts, pretends to set up various grounds of defence; and whereas, moreover, the said Zunts, for the purpose of putting an end to said litigation, has proposed as a compromise and final settlement of the same to in addition to what has already been paid, the sum of fifty thousand dollars in cash, and the further sum of fifty thousand dollars payable on the first day of March, eighteen hundred and sixty-five, with interest thereon at the rate of eight per centum per annum from the first day of March, eighteen hundred and sixty-four, for which the said Zunts shall furnish (the notes) in such sums as to suit the purpose of this partition of William Stackhouse and H. Stachouse payable as before stated, with interest, which
52 said William Stackhouse and H. Stackhouse have agreed to purchase the Bellechasse plantation by act of sale to be executed concurrently with this agreement; said notes are to be drawn to the order of and endorsed by James E. Zunts, and to be secured by a first mortgage on said plantation, the said Zunts further agreeing to pay twenty-five hundred dollars in part payment of the counsel fees of said Theodore Packwood.

Now, therefore, the undersigned, the heirs and representatives of the late Samuel Packwood and Mrs. Mary A. C. Packwood, all acting either for themselves or by their duly authorized representatives, deeming it advisable to put an end to the respective litigations hereinbefore recited, and for the purpose of compromising and finally adjusting the same, do hereby agree and consent as follows, to wit:

First. It is agreed that the proposition made by the said James E. Zunts be accepted, subject, however, to the conditions and stipulations contained in the following clauses of this act of compromise.

Now, therefore, for the purpose of carrying out fully, finally and
53 legally all the conditions and agreements contained in said agreement of compromise, they, the said appearers, in their said several capacities, do hereby consent and agree and bind themselves, their constituents, pupils and their respective heirs, executors, and administrators, to abide by the same, and this their act of partition of their interest in the succession of the said Samuel Packwood in accordance with said agreement of compromise, the said James E. Zunts hereby consenting on his part to the provisions of said compromise as the same concerns him and the confirmation to him of the title to said plantation and slaves.

And whereas since this sale and adjudication of said plantation and slaves, the said James E. Zunts has agreed to sell and dispose of the same to Messrs. William Stackhouse and Heywood Stackhouse, and that the title should now be confirmed by said heirs direct to them, the said William Stackhouse and Heywood Stackhouse:

Now, therefore, in confirmation and execution of said agreement
54 of compromise, they, the said heirs and representatives of the heirs of said succession of the said Samuel Packwood, deceased, in their several capacities, and to the extent of their several interests, moreover declared that for the consideration and on the terms and conditions hereinafter expressed, they do, by these presents, grant, bargain, sell, convey, transfer, assign, and set over unto the said William Stackhouse and Heywood Stackhouse, who are all here present accepting the same for themselves, their heirs and assigns, and acknowledging delivery and possession thereof, the said Bellechasse plantation and slaves, which is more fully described as follows, to wit:

That certain tract of land cultivated as a sugar plantation situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about five and a half leagues from the city of New Orleans, and measuring fifty-seven and a half acres front on said river by forty arpents in depth, bounded on the upper side by lands of Rosette Dupont, a free woman of color, and below by that of Jean
55 Y. de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, plows, carts, and all other movables belonging or appertaining to said plantation, and together with the following described slaves, to wit:

Description of the land here follows, names, &c., of the slaves, which it is unnecessary to copy, and with reference to whom the following clause:

All of the said plantation and movable property were transferred to and placed in the possession of James E. Zunts at the time of said adjudication to him on the said , and he has retained possession of them, and no guarantee or warranty is hereby given for said slaves or movable property, and said slaves being mentioned simply as a description of the property originally purchased by said Zunts, and not for the purpose of conveying same by this act.

By this act Zunts was relieved of his debt to the Packwood heirs, and W. & H. Stackhouse became the owners of the Bellechasse plantation.

56 On the 15th February, 1865, W. & H. Stackhouse, before the same notary, declared that they were indebted unto James E. Zunts in the sum of $50,000.00 and interest, as evidence of which they furnished their two several promissory notes drawn by them and endorsed by themselves, dated the first day of February, 1864, and made payable, each for the sum of $25,000.00, on the first day of February,

1866, to secure the payment of which the Stackhouses specially mortgaged and hypothecated the Bellechasse plantation.

These notes were not paid at maturity, and some time thereafter Zunts proceeded, by via execution, to enforce his mortgage.

The ground of injunction is that the notes given and mortgage granted were without any consideration whatever; that when they were given they were not, and that they are not now, indebted unto Zunts in any manner whatever. They aver that shortly after the contract of compromise above referred to was entered into, Zunts induced them to execute the notes sued on, by assuring them that long before their
57 maturity he would sell to them the slaves enumerated in the contract of partition, and would convey to them a good and valid title to said slaves, well knowing that he could not do so, as slavery had been abolished, and that he had no right, title, or interest in the persons who had formerly belonged to Packwood and himself as slaves. To his petition of injunction there was filed a general and special denial of all the allegations contained in the petition.

The injunction issued on the 15th day of February, 1867. The case is now before us for the fourth time, twice on its merits and twice on rehearing. It has taken more than 180 pages of printed pages to put before us the mass of testimony which was taken on the trial of the cause. I have read over this testimony, and in the whole of it I do not find anything to substantiate the allegation in the petition that before the maturity of the notes sued on Zunts would sell the slaves enumerated in the act of compromise, sale, and partition.

Heywood Stackhouse swears that they received no considera-
58 tion for the notes, but he says he has no personal knowledge of the circumstances of the transaction; that his brother acted for the partnership in the matter, and William Stackhouse says they were given for the price of the slaves on the Bellechasse plantation, when I purchased the land for $100,000, and the rest of the testimony refers to the value of the Bellechasse plantation at the time of the sale, and the reservation of Zunts of some of the slaves thereon, and other matters relating to the sale of that plantation. Now, all the persons named as slaves thereon were sold to the Stackhouses by the act by which they became the purchasers thereof, in so far as they could be sold, and all of them were mentioned simply as a description of the property originally purchased by Zunts and not for the purpose of conveying the same by that act. This is Stackhouse's acknowledgment and contract, as is shown by his own act, passed before Madden in the transaction of compromise, sale, and partition. If there was any contest as to the consideration of this sale, I could understand how the question of slave
59 consideration could be inquired into; but there is not, and if there had been, the question would have been between the Stackhouses and Packwood, who sold the property, and not between the Stackhouses and Zunts, who sold them nothing.

There being no evidence to support the allegation that the consideration of the notes sued on by Zunts was a promise to sell slaves, I think the injunction should be dissolved.

I therefore concur in the opinion of the majority of the court rendered in May last, and I am instructed to say that the rehearing is refused.

A true copy.

JNO. P. JULIAN,
D'y Clerk.

Recorded at the request of James E. Zunts, parish of Plaquemines, this 17th day of December, A. D. 1874.
(Signed) C. V. THIBAUT,
Recorder.

A true copy from the records of my office, parish of Plaquemines, September 10th, 1874.
[L. S.] (Signed) C. V. THIBAUT,
Recorder.

Supreme court of the State of Louisiana.

CLERK'S OFFICE,
New Orleans, May 31st, 1873.

60 W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 4019.

Appeal from the fifth district court for the parish of Orleans.

Mr. Justice WYLY:
It is therefore ordered that the judgment herein in favor of the defendant be affirmed with costs.

A true copy.

S. McHYMAN,
Dy Clerk.

Sale of property by James P. Waters to Wm. & H. Stackhouse, Moliere tract.—Filed January 20th, 1875.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this tenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth, before me, Joseph Cohn, notary public in and for the parish and city of New Orleans, State of
61 Louisiana aforesaid, duly commissioned and sworn, personally came and appeared James P. Waters, of the parish of Plaquemines, in this State, a widower, who declared that for and in consideration of the price and sum of five thousand dollars ($5,000) unto him paid in cash, the receipt of which sum he does hereby acknowledge and grants a full acquittance and discharge therefor, he does, by these presents, grant, bargain, sell, convey, set over, and deliver, with all lawful warranties and with substitution and subrogation to all his rights and actions of warranty against all former owners and proprietors, unto Messrs. William Stackhouse and Heywood Stackhouse, also of said parish of Plaquemines, and who are here present, accepting and purchasing in the proportion of one undivided half each for themselves, their heirs and assigns, and acknowledging delivery and possession of the following property:

A certain tract of land, with all the improvements thereon, rights, ways, and advantages belonging, situate in the parish of Plaque-
62 mines, in this State, on the right bank of the river Mississippi, about twenty-four miles below the city of New Orleans, bounded

above by lands of Dr. D. R. Fox and below by lands of William F. Pruitt, and measuring five arpents front on the Mississippi River by forty arpents in depth. Purchased by the present vendor from Joseph M. Salvant, by act before William Shannon, a notary public, in this city, on the seventh of January, 1867.

To have and to hold the said property unto the said purchasers, their heirs and assigns forever.

The vendor declares that said land is free from all mortgages, taxes, and incumbrances of any kind, and said parties waive the production of a certificate from the recorder of mortgages for said parish, fully exonerating me, notary, from all responsibility. Five dollars internal revenue stamps is hereto affixed and cancelled.

The purchasers declared that they take charge of the recording of this act.

Thus done and passed in my office, at the said city of New
63 Orleans, in the presence of Charles F. Barry and Eusebe Bouny, witnesses of lawful age, and domiciled in this city, who hereunto sign their names, together with the said parties and me, the said notary, on the day, month, and year as above written.

(Original signed) J. P. WATERS.
WM. STACKHOUSE.
HEYWOOD STACKHOUSE.
CHAS. F. BARRY.
E. BOUNY.

JOSEPH COHN,
Not. Pub.

A true copy:
[L. S.] (Signed) JOSEPH COHN,
Not. Pub.

Sale of plantation by J. P. Waters to W. & H. Stackhouse "New Hope Plantation."—Filed January 20th, 1875.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this tenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independ-
64 ence of the United States of America the ninety-second, before me, Joseph Cohn, notary public in and for the parish and city of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared James Philip Waters, of the parish of Plaquemines, in this State, widower, who declared that for and in consideration of the price and sum of fifty thousand dollars ($50,000.00) to him paid in cash, current money, the receipt of which sum he does hereby acknowledge and grants full acquittance and discharge therefor, he does, by these presents, grant, bargain, sell, convey, set over, and deliver, with all lawful warranties and with substitution and subrogation to all his rights and actions of warranty against all former owners and proprietors, unto Messrs. William Stackhouse and Heywood Stackhouse, of said parish of Plaquemines, in this State, and who are here present, accepting and purchasing for themselves, their heirs and assigns, and acknowledging delivery and possession of the following described property:

First. A certain tract of land, cultivated as a sugar plantation,
65 known under the name of New Hope Plantation, *known under the*

Recorded at the request of James E. Zunts, parish of Plaquemines, this 17th day of December, A. D. 1874.
(Signed) C. V. THIBAUT,
Recorder.

A true copy from the records of my office, parish of Plaquemines, September 10th, 1874.
[L. S.] (Signed) C. V. THIBAUT,
Recorder.

Supreme court of the State of Louisiana.

CLERK'S OFFICE,
New Orleans, May 31st, 1873.

60 W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 4019.

Appeal from the fifth district court for the parish of Orleans.

Mr. Justice WYLY:
It is therefore ordered that the judgment herein in favor of the defendant be affirmed with costs.

A true copy.

S. McHYMAN,
D'y Clerk.

Sale of property by James P. Waters to Wm. & H. Stackhouse, Moliere tract.—Filed January 20th, 1875.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this tenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth, before me, Joseph Cohn, notary public in and for the parish and city of New Orleans, State of
61 Louisiana aforesaid, duly commissioned and sworn, personally came and appeared James P. Waters, of the parish of Plaquemines, in this State, a widower, who declared that for and in consideration of the price and sum of five thousand dollars ($5,000) unto him paid in cash, the receipt of which sum he does hereby acknowledge and grants a full acquittance and discharge therefor, he does, by these presents, grant, bargain, sell, convey, set over, and deliver, with all lawful warranties and with substitution and subrogation to all his rights and actions of warranty against all former owners and proprietors, unto Messrs. William Stackhouse and Heywood Stackhouse, also of said parish of Plaquemines, and who are here present, accepting and purchasing in the proportion of one undivided half each for themselves, their heirs and assigns, and acknowledging delivery and possession of the following property:

A certain tract of land, with all the improvements thereon, rights, ways, and advantages belonging, situate in the parish of Plaque-
62 mines, in this State, on the right bank of the river Mississippi, about twenty-four miles below the city of New Orleans, bounded

above by lands of Dr. D. R. Fox and below by lands of William F. Pruitt, and measuring five arpents front on the Mississippi River by forty arpents in depth. Purchased by the present vendor from Joseph M. Salvant, by act before William Shannon, a notary public, in this city, on the seventh of January, 1867.

To have and to hold the said property unto the said purchasers, their heirs and assigns forever.

The vendor declares that said land is free from all mortgages, taxes, and incumbrances of any kind, and said parties waive the production of a certificate from the recorder of mortgages for said parish, fully exonerating me, notary, from all responsibility. Five dollars internal revenue stamps is hereto affixed and cancelled.

The purchasers declared that they take charge of the recording of this act.

Thus done and passed in my office, at the said city of New
63 Orleans, in the presence of Charles F. Barry and Eusebe Bouny, witnesses of lawful age, and domiciled in this city, who hereunto sign their names, together with the said parties and me, the said notary, on the day, month, and year as above written.

(Original signed) J. P. WATERS.
WM. STACKHOUSE.
HEYWOOD STACKHOUSE.
CHAS. F. BARRY.
E. BOUNY.

JOSEPH COHN,
Not. Pub.

A true copy:
[L. S.] (Signed) JOSEPH COHN,
Not. Pub.

Sale of plantation by J. P. Waters to W. & H. Stackhouse "New Hope Plantation."—Filed January 20th, 1875.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this tenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independ-
64 ence of the United States of America the ninety-second, before me, Joseph Cohn, notary public in and for the parish and city of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared James Philip Waters, of the parish of Plaquemines, in this State, widower, who declared that for and in consideration of the price and sum of fifty thousand dollars ($50,000.00) to him paid in cash, current money, the receipt of which sum he does hereby acknowledge and grants full acquittance and discharge therefor, he does, by these presents, grant, bargain, sell, convey, set over, and deliver, with all lawful warranties and with substitution and subrogation to all his rights and actions of warranty against all former owners and proprietors, unto Messrs. William Stackhouse and Heywood Stackhouse, of said parish of Plaquemines, in this State, and who are here present, accepting and purchasing for themselves, their heirs and assigns, and acknowledging delivery and possession of the following described property:

First. A certain tract of land, cultivated as a sugar plantation,
65 known under the name of New Hope Plantation, *known under the*

name of New Hope Plantation, situated in the parish of Plaquemines, in this State, on the right bank of the river Mississippi, at about seven leagues below the city of New Orleans, measuring thirty-one arpents front on said river, by forty arpents in depth, bounded on the upper line by the lands of Auguste and Octave Reggio, and below by the tract of land hereinafter described, together with all the buildings and improvements thereon, consisting of a sugar-house, machinery, quarters, mules, carts, and farming utensils thereunto belonging or in anywise appertaining.

Second. A certain tract of land situate in said parish on the right bank of the river Mississippi at about twenty-four miles below the city of New Orleans and measuring three arpents front on said river, by forty arpents in depth, bounded above by the plantation above described and below by that of Réné Sarpy with all the buildings and improvements thereon.

The above described property was acquired by the present ven-
66 dor by purchase from Messrs. William and Heywood Stackhouse by an act executed before Simon Martin, recorder for the parish of Plaquemines, on the 18th November, 1867.

To have and to hold the said property unto the said purchasers, their heirs and assigns forever.

The vendor declares that there are no taxes due on said property, which is satisfactory to the purchasers, who exonerate me, notary, from all responsibility.

Fifty dollars internal revenue stamps are hereto affixed and cancelled.

And the purchasers declare that they dispense with the production of a certificate from the recorder of mortgages for the said parish of Plaquemines, and exonerate me, notary, from all responsibility, and also take charge of the recording of this act.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Charles F. Barry and Eusebe Bouny, witnesses of law-
ful age, and domiciled in this city, who hereunto sign their names
67 together with the said parties and me, the said notary, on the day, month, and year as above written.

(Original signed) J. P. WATERS.
WM. STACKHOUSE.
H. STACKHOUSE.
CHAS. F. BARRY.
E. BOUNY.

JOSEPH COHN,
Not. Pub.

A. true copy.
[L. S.] (Signed) JOSEPH COHN,
Notary Public.

Partition between Wm. Stackhouse and heirs of Heywood Stackhouse.—Filed January 20, 1875.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this seventh day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-sixth, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came
and appeared the following named persons, residents of the par-
68 ish of Plaquemines, in this State, viz: 1°. William Stackhouse; 2°.

Mrs. Sarah F. Brooks, of lawful age, widow of the late Heywood Stackhouse, late of said parish of Plaquemines, deceased, herein acting as well for herself individually as widow in community of her said deceased husband, as also in her capacity as the duly appointed and qualified natural tutrix of her minors, Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse, issue of her marriage with her deceased husband, Heywood Stackhouse; and 3°. Mrs. Lilla Stackhouse, the wife of lawful age of John W. Bryant, and herein duly authorized and assisted by her said husband, who is here also present.

Which said appearers declared that whereas in order to fully settle the commercial partnership which formerly existed in this city and State between the said William Stackhouse and said deceased, Heywood Stackhouse, and the ordinary partnership which has existed many years between them relative to the ownership of several plantations in
69 the parish of Plaquemines, in this State, and the working, management, and cultivation thereof, it has been proposed to make a final settlement and partition among said William Stackhouse and the widow and heirs of said Heywood Stackhouse of all the property belonging to said copartnerships now held and owned by them in common, and the payment of the debts thereof, by giving in payment or setting apart and selling or conveying certain real estate and property unto each of them, equivalent in value to the rights and claims of the said William Stackhouse and Heywood Stackhouse against and in their said partnership or common property, and to these ends said William Stackhouse and Mesdames Sarah F. Stackhouse and Lilla Bryant in their aforesaid capacities entered into the following agreement, viz:

Mem. of proposed settlement and compromise.

1st. Mrs. Stackhouse to have New Hope plantation and all appurtenances, free from debt, and cash $2,500, 3 notes of $500 each, payable in 6, 12, and 18 mo's, with six per cent. interest from date, $1,500.

70 William Stackhouse to have Bellechasse and Villeré, Live Oak Grove plantations, and to assume the payment of all outstanding obligations of W. & H. Stackhouse, including account of Byrnes & Barstow and claim of James E. Zunts.

It being well understood that if the Zunts claim is not recognized by judgment of court, Mrs. Stackhouse makes no claim and William Stackhouse is to have entire benefit; he assumes all charges and claims connected therewith.

The produce now on Live Oak Grove to be shipped to Byrne & Barstow, and all of the hands, employés, and claims against said plantation and produce to be paid out of the same, or by Wm. Stackhouse, except that of Putnam Brooks, which Mrs. Stackhouse assumes.

Mrs. Stackhouse to have all of her furniture, and all of her horses, carriages, and everything except farming utensils and corn, &c., attached to the plantation; this to be a full and complete settlement of all of the partnership affairs of W. & H. Stackhouse.

(Signed) W. STACKHOUSE.
JOHN W. BRYANT.

71 For Mrs. S. H. Stackhouse, subject to her right to disapprove and reject within four days after this date.

We approve and recommend this.

(S'd) CLARKE, BAYNE & RENSHAW,
Ag'ts J. B. Eustis, for Mrs. Stackhouse.

(") C. ROSELIUS & ALFRED PHILIPS,
For Wm. Stackhouse.

The three notes above mentioned to bear special mortgage on Bellechasse and Villeré tract and plantation at eight per cent., Mrs. Stackhouse to occupy the house, yards, garden, and servants' rooms on Live Oak Grove; to have the charge of the two pairs of centrefugals complete on Live Oak Grove; to be allowed to remove the two new cisterns on L. O. Grove; to have the Levee Bend entire; to select four mules from Live Oak Grove, Mrs. Stackhouse to be liable for her personal debts, except and such as have been or are represented in any account with Byrne & Barstow.

(Signed) JOHN W. BRYANT,
For Mrs. Stackhouse.
(") W. STACKHOUSE.

That the said William Stackhouse and Mesdames Sarah F. Stackhouse and Lilla Bryant, in her said capacities, considered the contemplated partition and giving in payment highly advantageous to all parties interested, but that on account of the minority of the other heirs of said Haywood Stockhouse, it became necessary that a family
72 meeting should take into consideration and decide upon the expediency and propriety of said contemplated partition and sale, or giving in payment, with regard to the interest of said minors, and therefore a family meeting of the relations and friends of the aforesaid minors, Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse, was convened and held before Charles V. Thibaut, recorder of said parish of Plaquemines, on the ninth day of April, eighteen hundred and seventy-two, agreeably to an order of the hon. the parish court of said parish of Plaquemines, dated 26th March, eighteen hundred and seventy-two, and rendered in the matter of the succession of said deceased, Haywood Stackhouse, and which said family meeting unanimously recommended and advised that the contemplated partition and settlement, or sale and conveyance of said partnership property, should be carried into effect, for the interest of said minors, on the terms specified in the above-mentioned agreement, and moreover made the following appraisement of the property so to be par-
73 titioned and sold, viz, the Bellechasse plantation, hereinafter fully described, at the sum of one hundred and fifteen thousand dollars; the Live Oak Grove plantation, hereinafter fully described, at the sum of sixty thousand dollars; the Villeré tract of land, hereinafter particularly described, at the sum of five thousand dollars; the Moliere tract of land, hereinafter described, at the sum of seven thousand dollars; and the New Hope plantation, hereinafter described, at the sum of thirty thousand dollars, agreeably to the provisions of section 2359 of the revised statutes of this State; all of which proceedings were duly approved and homologated by the Hon. William M. Prescott, judge of the parish court of and for said parish of Plaquemines (in which parish said minors reside), under date of the thirteenth day of April, eighteen hundred and seventy-two, as will more fully appear by reference to a certified copy of said order of court hereto annexed for reference.

Now, therefore, for the purpose of making said partition and settlement of the partnership affairs of the said William Stack-
74 house and said deceased, Haywood Stackhouse, and setting apart and conveying to each his share of the property thereto belonging, or heretofore held and owned by them in common, and liquidating and finally settling their respective claims and rights in and to the several partnerships which heretofore existed between them, the said appearers severally declared in their said capacities that the rights and

claims of said William Stackhouse shall be satisfied by his taking in payment therefor the property and effects described as follows, viz:

Share of William Stackhouse.

1°. A certain tract of land cultivated as a sugar plantation and known by the name of "Bellechasse plantation," situated in the parish of Plaquemines in this State, on the right bank of the Mississippi River, at about five and a half leagues below the city of New Orleans, and measuring fifty-seven and a half acres front on said river by forty arpents in depth, bounded on the upper line by lands of Rosetta Roupont or the cut-off road, and below by that known as the Ste. Ann plantation, together
75 with all the buildings and improvements thereon, machinery, apparatus, mules, horses, cattle, hogs, oxen, farming utensils, agricultural implements, carts, and all other movables belonging and appertaining to said plantation, which said plantation was acquired by said William and Haywood Stackhouse by an act passed before Hugh Madden, late a notary in this city, on the thirteenth day of January, eighteen hundred and sixty-five, and said Bellechasse plantation was appraised by said family meeting at the sum of one hundred and fifteen thousand dollars 115,000

2d. A certain plantation situated in said parish of Plaquemines, in this State, known as the Live Oak Grove plantation, on the right bank of the Mississippi River, at about twenty-four miles below the city of New Orleans, having twenty-two arpents front on said river by forty arpents in depth between diverging lines, giving in the rear a width of thirty-four arpents or thereabout, bounded on the lower line by the property of A. Barrois, formerly E. Becknel, and on the upper line by the

76 Amount brought forward $115,000

property known as the Sarah plantation, together with all the buildings thereon, and all machinery and agricultural implements, mules, horses, cattle, hogs, farming utensils, and other appurtenances thereto belonging or appertaining, and also all excess of land which may exist between the aforesaid boundaries without reservation as well as all the rights to the depth of said plantation beyond the forty arpents, the whole agreeably to the titles and without any guarantee for such rights which said plantation was acquired by said William and Heywood Stackhouse by purchase from Bernard Marigny, by an act passed before Adolphe Boudousquié, late notary in this city, on the thirteenth day of March, eighteen hundred and fifty-two, and the same was appraised by said family meeting at the sum of sixty thousand dollars 60,000

3°. A certain tract of land together with the buildings and improvements thereon and all

Am't carried over $175,000

77 Amount brought forward $175,000

rights, and appurtenances thereto belonging,

known as the Villeré "tract," situate in the parish of Plaquemines, in this State, at about fifteen miles below the town of Algiers, by river, and between eight and nine miles by the cut-off road on the right bank of the Mississippi River, bounded above by lands of succession of Constance Larche and below by lands known as Bellechasse plantation, or the Cut-off Road, and measuring five arpents, more or less. The lines open towards the rear, giving an area of three hundred and seventy-eight and $\frac{12}{100}$ acres, more or less, the cut-off road passing through the land, being the same portion of ground designated by the number eight on a plan or sketch by Wm. Severy, surveyor, dated August 28th, 1853, which said property was acquired by the said William and Heywood Stackhouse, by purchase from Felix Villeré, by an act passed before Amedeé Ducatel, a notary

Am't carried over..... $175,000

78 Am't brought forward..... $175,000

in this city, on the ninth day of October, eighteen hundred and sixty-nine, and the same was appraised by the said family meeting at the sum of five thousand dollars..... 5,000

Making the total appraisement of the said three pieces of property above described the sum of one hundred and eighty thousand dollars..... $180,000

But the aforesaid Bellechasse plantation is subject to a conventional mortgage in favor of J. E. Zunts for part of the purchase price agreed to be paid for the slaves thereon, and amounting, with interest, to the sum of seventy-five thousand dollars..... $75,000

And said Live Oak Grove plantation is subject to a mortgage in favor of the Citizens' Bank of La. for various loans and stock notes, with interest, amounting to the sum of fifty-eight thousand dollars..... 58,000

Making a total sum of one hundred and thirty-three thousand dollars..... $133,000

Am't carried over..... $133,000 $180,000

79 Forward..... $180,000

With which said share of said William Stackhouse is already charged, and subject to which liens and mortgages he accepts the same, thereby reducing the actual value of his said share to the sum of forty-seven thousand dollars..... 47,000

And that the rights and claims of the succession and estate of said Heywood Stackhouse should be settled and satisfied by the said widow and heirs, taking therefor the following described property, viz:

Share of the succession of Haywood Stackhouse.

1°. A certain tract of land with all the improvements thereon, and all rights, ways, privileges, and appurtenances

thereto belonging, situate in the parish of Plaquemines, in this State, known as the "Moliere tract," on the right bank of the Mississippi River, about twenty-four miles below the city of New Orleans, bounded above by lands of Dr. D. R. Fox and below by lands formerly of William F. Pratt, now known as Sarah plantation,
80 and measuring five arpents front on the Mississippi River by forty arpents in depth, acquired by the said W. & H. Stackhouse by purchase from James P. Waters, by an act passed before Joseph Cohn, a notary in this city, on the 10th of September, 1869, and the same was appraised by said family meeting at the sum of seven thousand dollars..... 7,000

2°. A certain tract of land, situate, lying, and being in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, and cultivated as a sugar plantation, known as the "New Hope plantation," and is at a distance of about twenty-three miles below the city of New Orleans, having and measuring thirty-four and a half arpents front on said river by forty arpents in depth, bounded above by the plantation of Octave Reggio and below by lands of René Sarpy, together with all the buildings and improvements thereon, sugar-house, machinery,

Am't carried over..... 7,000

81 Am't brought forward..... $7,000

agricultural implements, horses, mules, cattle, carts, and all other appurtenances thereto belonging or appertaining, which said plantation was acquired by said W. and H. Stackhouse from James P. Waters, by act before J. Cohn, notary, on 10th January, 1868, and the same was appraised by said family meeting at the sum of thirty thousand dollars..... $30,000

3°. Cash in United States Treasury notes the sum of twenty-five hundred dollars..... 2,500

And 4°. Three certain promissory notes for the sum of five thousand dollars each, drawn by said William Stackhouse to the order of and endorsed by himself, dated the sixteenth day of February last past, and payable at six, twelve, and eighteen months, respectively, after date, with interest at the rate of eight per cent. per annum from date until final payment, said notes amounting together at the sum of fifteen thousand dollars..... $15,000

Making the total appraisement of said property and
82 cash and amount of said notes, constituting the share of said widow and heirs of Haywood Stackhouse, the sum of fifty-four thousand dollars..... $54,000 00

Which is in excess of that of said William Stackhouse, for the reason that the aforesaid mortgage in favor of J. E. Zunts, and affecting said Bellechasse plantation, is the subject-matter of litigation, and if the same should be decided adversely to said Zunts, the said widow and heirs of said Haywood Stackhouse shall not be entitled to or have any claim or right to the benefit that would result from said decree, who is to have and enjoy the sole right, benefit, and advantage therewith connected,

and pay all charges and claims connected therewith, as also discharge the same in case its validity should be maintained.

To have and to hold the said several properties and effects unto the said respective parties, their heirs, and assigns to their and each of their proper use and behoof forever.

And the said Mesdames Sarah F. Stackhouse and Lilla Bryant, in their said capacities do moreover, by these presents, sell, transfer, convey, assign, and set over unto the said William Stackhouse,
83 all their right, title, and interest, as well as that of the succession and estate of said deceased, Haywood Stackhouse, of, in and to the property herein allotted and given to him in payment of his share in said partnerships affairs and effects.

And said William Stackhouse also does hereby sell, convey, transfer, assign, and set over unto the said Mesdames Sarah F. Stackhouse and Lilla Bryant, and the said minors, Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse, the widow and heirs of said deceased, Haywood Stackhouse, all his right, title, and interest in and to the property herein allotted and given to the succession and estate of said deceased, Haywood Stackhouse, in payment of his share in said partnerships affairs and effects.

And the said parties do moreover, in their aforesaid capacities, hereby respectfully acknowledge delivery and possession of the several pieces of property and effects allotted and sold to them, and also transfer to each other all the rights and actions of warranty to which they are or in any wise may be entitled, against all former owners of the property
84 herein conveyed and transferred unto each other, and subrogating the present owners as herein constituted to the said rights and actions, to be by them and each of them enjoyed and exercised in as full and ample manner to all intents and purposes as need or could be required.

And in order to secure the punctual payment at maturity of the aforesaid three promissory notes of five thousand dollars each herein given by said William Stackhouse, as well as of all interest to accrue thereon, and in order furthermore to secure the payment and reimbursement of any and all lawyers' fees that may be expended or incurred in the event of suit being instituted to enforce the payment of said notes or either of them, in principal and interest, or any part thereof, (which lawyers' fees, however, are fixed at five per cent. on the amount so in suit, and said William Stackhouse consents and agrees to pay, and all on the same), the said William Stackhouse hereby specially mortgages and hypothecates unto and in favor of said widow and heirs of said Haywood Stackhouse, as well as of any and all future owners
85 or owners of said notes or either of them, the hereinbefore mentioned and described Bellchasse and Villeré plantations, promising and binding himself and his heirs not to alienate, deteriorate, or encumber the said property to the prejudice of this mortgage.

And said William Stackhouse hereby assumes and binds and obligates himself to pay and discharge any and all outstanding obligations or indebtedness of said copartnership on the herein described plantations, including pay of hands, laborers, and employees, and the account of Byrne & Barstow, it being understood that all produce on the Live Oak Grove plantation shall be shipped to and sold by said Byrnes & Barstow, and the proceeds thereof applied to the settlement and extinguishment of said partnership indebtedness; also that any and all indebtedness of said W. & H. Stackhouse, or either of them, due unto Putnam Brooks shall be paid and discharged by the widow and heirs of

said Haywood Stackhouse; further, that all stock of the Citizens' Bank of Louisiana attached to the Live Oak Grove plantation and New Hope plantation are transferred respectively with said plantations
86 to the several transferrees thereof, each of whom assumes the obligations therewith connected as regards the particular number of shares attached to the plantations respectively acquired by them hereunder.

And here the said parties declared that they dispensed with the production of a certificate from the recorder of mortgages of said parish of Plaquemines for annexation hereto as is otherwise required by law; also that if the said Mesdames Stackhouse and Bryant, in their aforesaid capacities, should be desirous of relieving said New Hope plantation from the stock of the Citizens' Bank of thereto attached (whereon all loans have been paid), said William Stackhouse binds himself to assume all the obligations resulting therefrom upon a transfer of their rights in said stock to him, which said election shall be made within thirty days from the date hereof; further, that Mrs. Stackhouse shall not have the use and occupancy of the dwelling house on Live Oak Grove plantation beyond the first day of February ensuing (1873).

And, finally, the parties hereto minutely discharge and release
87 each other from any and all manner of action and actions, cause or causes of actions, suits, debts, dues, and sums of money, claims, and demands whatsoever, in law or in equity, which said William Stackhouse and Heywood Stackhouse and the widow and heirs of the latter ever had or now had, or which either, or their heirs, executors, administrators, or assignes hereafter can, shall, or may have by reason of any matter, cause, or thing whatsoever arising out or concerning the several partnerships heretofore existing between said William Stackhouse and Haywood Stackhouse and their joint ownership and management of any and all real estate.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of George Cenas and Paul A. Conant, witnesses, both of this city, who hereunto sign their names with the said parties and me the said notary the day and date aforesaid.

(Signed) S. F. STACKHOUSE.
" LILLA A. BRYANT.
" JOHN W. BRYANT.
" W. STACKHOUSE.
" GEO. CENAS.
" P. A. CONAND.
" ANDREW HERO, JR.,
Not. Pub.

88 The above and foregoing is a true and correct copy of the original act (duly stamped) on file and of record in my notarial archives.

New Orleans, January 14th, 1875.
(Signed) ANDREW HERO, JR.,
Not. Pub.

Recorded parish of Plaquemines this 23d day of May, A. D. 1872.
(Signed) C. V. THIBAUT,
Recorder.

A true copy.
[L. S.] (Signed) A. WILLIAMS,
D'y Recorder.

Demand of payment made on defendants.—Filed January 20th, 1875.

NEW ORLEANS, *October 5th*, 1874.

To Mrs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and tutrix of the minors Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse; and to Mrs. Lilla Stackhouse, wife of John W. Bryant, heirs and legal representatives of Haywood Stackhouse, deceased.

89 Take notice that payment is hereby demanded of you in your capacity as heirs of Haywood Stackhouse, deceased, of the judgment rendered in the case of W. and H. Stackhouse vs. James E. Zunts, No. 18850 of the 5th district court for the parish of Orleans, to wit, twenty per cent. damages on the amount of the judgments herein enjoined, together with (8 %) eight per cent. interest as allowed on the order of seizure and sale, viz, twenty per cent. on $50,000 from February 1st, 1866, until paid, which said damages remain unpaid notwithstanding due demand.

And you are further notified as third possessors of the following-described property:

1°. A certain tract of land, with all the improvements thereon, and all rights, ways, privileges, and appurtenances thereto belonging, situate in the parish of Plaquemines, in this State, known as the Moliere tract, on the right bank of the Mississippi River, about twenty-four miles below the city of New Orleans, and bounded above by the lands of Dr. D. R. Fox and below by the lands formerly of William F.
90 Pratt, now known as Sarah plantation, and measuring five (5) arpents front on the Mississippi River by forty arpents in depth, acquired by W. & H. Stackhouse by purchase from James P. Waters.

2°. A certain tract of land situate, lying, and being in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, and cultivated as a sugar plantation, known as the New Hope plantation, and it is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and a half (34½) arpents front on said river by forty arpents in depth, bounded above by the plantation of Octave Reggio and below by the lands of René Sarpy, together with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, carts, and all other appurtenances thereto belonging or appertaining, to pay the amount of said judgment above mentioned or deliver up the above-described property, upon which I have a judicial mortgage, resulting from the inscription of said judgment in the office of the parish recorder;
91 otherwise I shall proceed against you and against said property in the manner pointed out by law.

Respectfully,

(Signed) JAMES E. ZUNTS.

Clerk's certificate.

I, the undersigned clerk, do hereby certify that the above and foregoing seventy-five (75) pages contain a true, correct, and exact transcript of all the proceedings had and documents filed (with the exception of the writ of seizure and sale issued in this case, which the sheriff has not yet returned), in the suit wherein James E. Zunts is plaintiff and Sarah F. Brooks, widow of H. Stackhouse, in her own right and as tutrix, et als., known and numbered as suit No. 2270 of the docket of

the second judicial district court of Louisiana in and for the parish of Plaquemines.

In testimony whereof I hereunto set my hand and affix the seal of the court aforesaid, at the parish of Plaquemines, this ninth day of September, in the year of our Lord one thousand eight hundred
92 seventy-five, and of the Independence of the United States of America the one hundredth.

[L. S.] (Signed) D. A. THIBAUT, *Clerk.*

(Endorsed:) No. 2270. 2d jud'l district court, parish of Plaquemines. James E. Zunts vs. Sarah F. Brooks, widow of H. Stackhouse, in her own right and as tutrix, et als. E. H. McCaleb, esq., att'y for Jas. E. Zunts. U. S. circuit court, No. 8116. Exhibit B filed Feb. 27th, 1877. F. B. Vinot, d'y clerk. A B filed before me May 30, '78. Francis B. Lee, spec. ex.

Exhibit C.—Filed February 27th, 1877.

STATE OF LOUISIANA,
Parish of Plaquemines:

RECORDER'S OFFICE.

93 I, the undersigned recorder in and for the parish of Plaquemines, do hereby certify that according to the records of my office up to the date hereof it appears that there are no other mortgages standing recorded in the name of William and Haywood Stackhouse (or the latter's succession), except the following, to wit:

1°. The mortgage granted by James Erwin in favor of the Citizens' Bank of Louisiana, as per act passed before Theo. Seghers, not. pub., on the 3d July, 1839, to secure the payment of one hundred and fifty-three shares of one hundred dollars each, making in all sixteen thousand three hundred dollars of the capital stock of said bank, and also to secure all loans on said shares, &c.

Which said mortgage was assumed by Messrs. William and Haywood Stackhouse, per act of sale executed before A. Mazureau, notary public, in New Orleans, on the 15th October, 1856, specially mortgaging and hypothecating the following described property:

A certain tract of land or plantation established as a sugar farm, situate in the parish of Plaquemines, on the right bank of the river
94 Mississippi, about seven leagues below the city of New Orleans, having thirty-one arpents front on said river by forty arpents in depth, bounded above by lands of Nicolas Reggio and below by that of Auguste Guerin, together with the buildings and improvements thereon, the dwelling-house, sugar-house, cabins, stables, &c., carts, implements of husbandry, horses, mules, oxen, &c., and also seventeen slaves attached to said plantation.

Recorded July 5th, 1839, book 4, fol. 85.

N. B.—By act of sale by Payne & Harrison to W. and H. Stackhouse, passed before A. Mazureau, notary public, October 15th, 1856, Messrs. W. and H. Stackhouse have assumed the above-recited mortgage.

Recorded April 28th, 1875.

2°. The mortgage granted by James Erwin in favor of the Citizens' Bank of Louisiana, per act passed before Tho. Seghers, notary public, in New Orleans, on the 1st of August, 1839, to secure the sum of eighteen thousand two hundred dollars in the capital stock of said bank, being the amount of one hundred and eight-two shares of $100

95 each, and also to secure the principal and interest of the loans to be raised to form the capital of said bank, and to secure all interest, according to the charter of said bank, specially mortgaging and hypothecating the above described property and slaves.

Recorded, parish of Plaquemines, August 2d, 1839, book 4, folio 88, No. 669.

N. B.—By virtue of an act of sale by Payne & Harrison to W. and H. Stackhouse, passed before A. Mazureau, notary public, on October 15th, 1856, William and Haywood Stackhouse have assumed the within mortgage.

By virtue of a public sale made by the sheriff of this parish on 6th of March, 1875, Silas W. Sawyer has taken the reversion of the within mortgage.

By virtue of an act of sale by S. W. Sawyer to Herbert Stackhouse of the one undivided half of said plantation, passed before C. V. Thibaut, recorder of this parish, on July 7th, 1875, Herbert Stackhouse has assumed one half of the said mortgage.

3°. The mortgage granted by William and Haywood Stack-
96 house in favor of the Citizens' Bank of Louisiana, per act of sale passed before A. Boudousquié, notary public, in New Orleans, on the 13th March, 1852, to secure the full and punctual payment of the following sums, to wit:

1°. The sum of seventy-one thousand seventy-five dollars 37½ cents, in liquidation whereof the said W. and H. Stackhouse have furnished the following obligations, drawn by them under date of 15th January, 1852: 1°. Two notes, amounting together to the sum of four thousand seven hundred and eighty-five $\frac{22}{100}$ dollars, payable in one and two years after date. 2°. A note made to the order of said bank for the sum of twelve thousand and ninety-five $\frac{99}{100}$ dollars, bearing interest, &c., and payable on the 1st day of May, 1852. 3°. Another note for the sum of eight thousand four hundred and thirteen $\frac{80}{100}$, bearing interest, &c., payable May 1st, 1852. 4°. And a stock note made in favor of said bank for the sum of forty-five thousand seven hundred and eighty dollars, payable May 1st, 1852.

2°. The sum of one hundred and thirty thousand eight hundred
97 dollars, amount of thirteen hundred and eighty (1,380) shares of said bank, the payment in principal and interest of the sum of forty-five thousand seven hundred and eighty dollars, the amount of said stock note, the said W. and H. Stackhouse, as far as said stock and the loans thereon are concerned, the following mortgages, to wit:

1st. The special mortgage granted by Bernard Marigny and wife, per act passed before Ch's Boudousquié, notary public, in New Orleans, on the 28th of April, 1841, in favor of the Citizens' Bank, on the plantation and slaves hereinafter described, to secure the sum of ninety-two thousand nine hundred dollars, amount of nine hundred and twenty-nine (929) shares of the capital stock of said bank.

2d. The one granted by said Bernard Marigny and wife, per act passed before Theodore Guyol, notary public, on the 28th October, 1845, in favor of said bank, to secure the following obligations, to wit:

The sum of thirty-seven thousand nine hundred dollars, amount of three hundred and seventy-nine shares, the payment of the loans
98 due thereon as well as interest, &c., and to secure the sum of nineteen thousand two hundred and sixty-seven $\frac{96}{100}$ dollars, amount of ten notes drawn by said Marigny to the order of said bank.

3°. The one granted by said Marigny and wife in favor of said bank, per act before A. Boudousquié, notary public, September 24, 1851, specially mortgaging and hypothecating the following described property, to wit:

A plantation situated in this parish on the right bank of the river Mississippi, at about 24 miles below the city of New Orleans, having 22 arpents front on said river by 40 arpents in depth between diverging lines, giving in the rear a width of thirty-four arpents or thereabout, bounded on the lower line by the property of Emile Becnel, and on the upper line by the property of Mr. Pinkard, together with all the buildings, improvements, machinery, steam-engines erected thereon, and generally all implements of husbandry, the horses, mules, and live stock, and all the excess of land which may exist between the aforesaid boundaries, without reservation, as well as the right to the depth
99 of said plantation, the whole agreeably to the titles and without any guarantee for such rights; also thirty-five slaves attached to said plantation.

Recorded April 12th, 1853, book A, folio 403.

N. B.—By virtue of a certificate of release the above recited mortgage have been raised on the 19th day of June, 1854, to the amount of four thousand seven hundred and eighty-five $\frac{52}{100}$ dollars, being the amount of the two first above mentioned notes, and by presentation of the notes of $12,095 and $8,413.86 fully paid and acquitted, the above mortgage has been on the 27th March, 1867, erased to that amount only.

4°. The mortgage granted by said W. and H. Stackhouse in favor of the Citizens' Bank of Louisiana, per act before A. Boudousquié, notary public, in New Orleans, on the 13th day of October, 1852, to secure the sum of forty-eight thousand seven hundred dollars in the following notes drawn by them under date 18th September, 1852: 1st, two notes for the sum of five thousand dollars, payable respectively on 1st January and 1st February, 1853, bearing interest, &c. 2d. Four notes for the sum of nine thousand six hundred and seventy-five dollars
100 each, payable respectively on the 1st January of the years 1854, 1855, 1856, and 1857, and bearing interest.

Specially mortgaging and hypothecating the last above described plantation and (103) one hundred and three slaves.

Recorded October 25th, 1852, book B, folio 9, No. 527.

N. B.—By virtue of certificates of release directed to the recorder of this parish, under date of June 19th, 1854, and January 2nd, 1858, the above recited mortgage has been reduced to the sum of nine thousand six hundred and seventy-five dollars, the five first above described notes having been paid.

5°. The mortgage granted by Messrs. William and Heywood Stackhouse in favor of Payne & Harrison, and of the Citizens' Bank of New Orleans, per act executed before A. Mazureau, notary public, on the 15th October, 1856, to secure the payment of the sum of one hundred and fifteen thousand dollars, bearing interest at the rate of eight per cent., from October 9th, 1856, until paid, with the exception of a certain debt due the Citizens' Bank, amounting to five thousand one hundred
101 and seventy-three $\frac{25}{100}$ dollars, on the 9th October, 1856, which is not to bear the same rate of interest. Ten thousand dollars thereof and interest at eight per cent. from 9th October to March 1st, 1859, on the whole of said sum of one hundred and fifteen thousand dollars, with the exception of said sum of five thousand one hundred and

seventy-five dollars to be paid to the said Payne & Harrison on the 1st March, 1857.

Binding themselves to pay to the Citizens' Bank of Louisiana said sum of five thousand one hundred and seventy-three $\frac{75}{100}$ dollars, as follows: The sum of one thousand eight hundred and forty-eight $\frac{75}{100}$ dollars, being the amount due on the 7th October, 1856, to said institution for past installments, interest and contributions, and for the balance said W. and H. Stackhouse have made a note for three hundred and thirty-five dollars, in favor of said bank, payable 1st May, 1857, with interest &c., and said W. and H. Stackhouse have furnished another obligation, termed a stock note, for two thousand nine hundred and ninety dollars, being the amount of loan due said bank, payable 1st July, 1857.

102 And also a draft due by them, dated this day, in favor of Payne and Harrison, for ten thousand dollars, on Chs. DeBlanc, payable March 1st, 1857.

And also five several promissory notes, four for the sum of twenty thousand dollars each, payable respectively at one, two, three and four years from date, and one for nine thousand eight hundred and twenty-six $\frac{75}{100}$ dollars, payable five years after date, specially mortgaged and hypothecated in favor of said Payne and Harrison, and all future holder or holders of said notes and drafts, the following described property:

A certain tract of land cultivated as a sugar plantation, known under the name of New Hope plantation, situated in the parish of Plaquemines, on the right bank of the river Mississippi, at about seven miles below the city of New Orleans, measuring thirty-one arpents front on said river by 40 arpents in depth, bounded on the upper line by the lands of Aug. and Oct. Reggio, and below by the lands of Aut. Vallette, together with all the buildings and improvements thereon, cabins, stores, sugar-house, barns, machinery and apparatus, mules,

103 horses, carts, ploughs, farming utensils, and thirty-three slaves, and moreover eleven slaves.

And in order more effectually to secure said two first notes of twenty thousand dollars, falling due March 1st, 1858, and March 1st, 1859, specially mortgaging as additional security the following described property, to wit:

A certain plantation situated in this parish, in this State, on the right bank of said river, about twenty-four miles below the city of New Orleans, having and measuring twenty-two arpents front on said river by forty arpents in depth, between diverging lines, thirty-four arpents in width in the rear or thereabouts, bounded on the lower line by the property of Emile Becnel, and on the upper line by the property of Mr. Pinkard, together with all the buildings and improvements thereon, and all appurtenances thereunto belonging or in anywise appertaining, and 108 slaves attached thereto.

Recorded October 20th, 1856, book B, folio 291.

N. B.—By virtue of a certificate of release dated December 2d, 1858, the privilege contained in the above act by which Messrs. W.

104 and H. Stackhouse bound themselves to ship a certain quantity of sugar to pay the sum of ten thousand dollars firstly mentioned, was annulled and cancelled, and by virtue of same act of release the within mortgage was partially cancelled and raised as regards the draft of ten thousand dollars, and a note of twenty thousand dollars drawn by said Stackhouse.

By production of the three notes of twenty thousand dollars, payable March 1st, 1859, 1860 and 1861, and also of the note of nine thousand eight hundred and twenty-six $\frac{75}{100}$ dollars, drawn by said Stackhouse,

payable March 1st, 1862, all paid and acquitted, this mortgage has been erased to the amount of said notes.

By virtue of a sale at auction by the sheriff of this parish, on the 6th March, 1875, S. W. Sawyer has assumed the reversion of this mortgage, so far as it concerns the Citizens' Bank.

By virtue of an act of sale passed before C. V. Thibaut, recorder, on the 7th January, 1875, Herbert Stackhouse has assumed one-half
105 of said mortgage, so far as the Citizens' Bank is concerned.

6°. The mortgage granted by W. and H. Stackhouse in favor of James E. Zuntz, as per act of mortgage executed before H. Madden, notary public, on February , 1865, to secure the sum of fifty thousand dollars in two notes, dated February 1st, 1864, and payable, each for twenty-five thousand dollars, on 1st February, 1866, with 6% interest from date till maturity, and from thence 8% int. per annum until final payment, specially mortgaging and hypothecating in favor of said Zuntz, or of any future holder or holders of said notes, the following property: That certain tract of land cultivated as a sugar plantation, situated in the parish of Plaquemines, known as Bellechasse, on the right bank of the Mississippi River, at about five and one-half leagues below the city of New Orleans, and measuring fifty-seven and one-half acres front, by forty arpents in depth, bounded on the upper line by lands of Rosette Poupart, and below by that of Juan Y. de Egana, together with all the buildings and improvements thereon, machinery, appurtenances,
106 agricultural implements thereon, ploughs, carts, &c.

Recorded October 18th, 1865, book C, fol. 225.

7°. The mortgage against the estate of H. Stackhouse, arising from the inscription of clerk's certificate of inventory to secure to the minors Lilla, Augusta, Blanche, Herbert, Maud, and Mabel Stackhouse, issue of the marriage of Mrs. Sarah F. Brooks with said Stackhouse, to secure the rights of said minors, amounting to $127.314.

Recorded June 2d, 1870, book D, folio 135.

8°. The privilege of Putnam Brooks for services as overseer on Live Oak plantation during the year 1872, amounting to fifteen hundred dollars.

Recorded January 31st, 1872, book D, folio 360.

N. B.—By virtue of a certificate of release issued by the sheriff of this parish, April 3d, 1875, the above mortgage is raised and cancelled so far as it concerns the Live Oak Grove plantation.

9th. The mortgage granted by William Stackhouse in favor of the succession of Haywood Stackhouse, as per act of partition passed before Andrew Hero, notary public, in the city of New Orleans, on May 7th, 1872, to secure the sum of fifteen thousand dollars, in three
107 notes, for the sum of five thousand dollars each, drawn by the said William Stackhouse, dated February 16th, 1872, and payable in 6, 12 and 18 months respectively, after date, with interest, &c., specially mortgaging and hypothecating the following described property: 1st. The above described property known as Bellechasse plantation; and, 2dly, a certain tract of land, together with the buildings and improvements thereon, known as the Villeré place, situated in this parish, at about fifteen miles below the town of Algiers, on the right bank of the Mississippi River, bounded above by lands of Constance Larche, and below by lands known as Bellechasse or the Cut Off Road,

and measuring five arpents, more or less, in front, on said Mississippi River, by a depth of forty arpents, more or less.

Recorded May 23d, 1872, book D, folio 408.

N. B.—By virtue of a certificate of release issued by the sheriff of this Plaquemines this mortgage is entirely erased and cancelled so far as it affects the Bellechasse plantation. March 6th, 1875.

10°. The claim of B. Meyers, dated May 27th, 1872, for lumber furnished W. & H. Stackhouse, amounting to $2,519\frac{71}{100}$.

108 Recorded July 6th, 1872, book D, folio 419.

N. B.—Cancelled and annulled, so far as the Bellechasse and Live Oak Grove plantation are concerned, by virtue of certificates of release issued by the sheriff of this parish April 21st and March 8th, 1875.

11th. The mortgage granted by William Stackhouse in favor of Mrs. Jesse W. Ross, per act of mortgage before Joseph Cohn, notary public, in New Orleans, on the 17th day of March, 1872, to secure the sum of eight thousand five hundred dollars in a certain promissory note, payable March 1st, 1873, specially mortgaging and hypothecating the following described property:

A certain tract of land, with all the improvements thereon, and all the rights, ways, and advantages belonging, situated at the English Turn, on the right bank of the Mississippi River, in the heretofore district of St. Leon, having eight arpents twenty toises front on said river by forty arpents, more or less, the whole as per plan made by B. Lafon, May 3d, 1805.

Recorded July 12th, 1873, book D, folio 583.

109 12th. The claim of John M. Schwartz against William Stackhouse, arising from the recording of a promissory note, dated September, 1873, for the sum of $512\frac{33}{100}$.

Recorded November 29th, 1873, Book D, fo. 617.

13. The claim of Riddle, Coleman & Co. for coal furnished during the year 1874, on Bellechasse plantation, amounting to $3,796\frac{95}{100}$.

Recorded December 6th, 1873, Book D, fol. 618.

N. B.—Erased and cancelled so far as Bellechasse and Live Oak Grove plantation are concerned.

14th. The claim of the Citizens' Bank for taxes of 1867, 1872, 1871, amounting to $4,097\frac{21}{100}$.

Recorded December 13th, 1873, Book D, fol. 620.

15th. The claim of Riddle, Coleman & Co. for coal furnished Bellechasse and Live Oak Grove plantations in 1873, amounting to $1,901.70.

Recorded December 18th, 1873, Book D, folio 622.

N. B.—Erased and cancelled by virtue of sheriff's certificate of release so far only as Bellechasse plantation is concerned.

110 16th. The judicial mortgage arising from the recording of the judgment rendered by the honorable the fourth district court for the parish of Orleans, on the 13th day of December, 1871, in the suit of Payne and Harrison, in liquidation, vs. Mrs. H. A. Stackhouse and W. Stackhouse, her husband, No. 23355 of the docket of said court, against the defendants for the sum of $36,652\frac{20}{100}$, with legal interest from May 29, 1869, & costs.

Recorded April 13th, 1872, Book A, jud. mort., folio 244.

17th. The judicial mortgage arising from the recording of a judgment rendered by the fifth district court for the parish of Orleans on the 20th day of February, 1872, in the suit of W. & H. Stackhouse vs. James E. Zuntz, No. 18850 of the docket thereof, in favor of defendant, dismissing plaintiffs' injunction with costs and condemning said plaintiffs to pay to defendant twenty per cent. damages on the amount of the judgment enjoined, together with eight per cent. interest as allowed on the order of seizure and sale.

Recorded April 17th, 1872, Book A, judicial mortgages, folio 245.

111 18th. The judicial mortgage arising from the inscription of the judgment rendered by the supreme court of this State, December 1st, 1873, affirming the above-recited judgment.

Recorded December 18th, 1873, jud. mort., Book A, folio 302.

19th. The privilege of the State and parish for State and parish taxes of 1873, 1872, 1871, as per delinquent list on file and recorded in my office.

20th. Mortgage granted by William Stackhouse in favor of Citizens' Bank of Louisiana to secure the sum of $48,854\frac{50}{100}$ upon the whole of his crops for the year 1873.

Recorded September 18th, 1873, Book D, folio 596.

21st. The claim of D. and J. D. Edwards for furniture to sugar-house and machinery on Bellechasse plantation for the year 1873, amounting to $166\frac{00}{100}$.

Recorded December 18th, 1873, Book D, folio 622.

In faith whereof I have hereunto set my hand and the seal of my office, at parish of Plaquemines, on this seventeenth day of February, in the year eighteen hundred and seventy-seven.

[L. S.] (Signed) A. E. LIVANDAIS,
Recorder.

112 (Endorsed:) Parish of Plaquemines. February 17th, 1877. Certificate of mortgages in the name of William and Heywood Stackhouse and estate of Stackhouse. A. E. Livandais, recorder. U. S. circuit court. No. 8116.

Exhibit C.—Filed Feb. 27th, 1877.—F. B. Vinot, D'y Clerk.

Exhibit C.—Filed February 27th, 1877.

THE STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

I hereby certify that on the twentieth day of February, 1872, judgment was rendered in this court in the entitled suit, in the words and figures following, to wit:

W. & H. STACKHOUSE
versus } No. 18850.
JAMES E. ZUNTZ.

113 In this case, for the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged, and decreed that there be judgment in favor of defendant, that the injunction herein be dismissed with costs, and the said defendant,

James E. Zunts, do have and recover of plaintiffs, William and Heywood Stackhouse, and their security on the injunction bond, in solido, twenty per cent. damages on the amount of the judgment enjoined, together with eight per cent. interest, as allowed on the order of seizure and sale.

It is further ordered that the claim for attorneys' fees herein be dismissed.

Judgment rendered February 20th, 1872.

" signed March 5th, 1872.

(Signed) CHARLES LEAUMONT,
Judge.

In testimony whereof I have hereunto set my hand and affix the seal of the said court, at the city of New Orleans, on the 9th day of February, in the year of our Lord one thousand eight hundred and seventy-seven and the one hundred and first year of the Independence of the United States.

[L. S.] (Signed) PAUL T. ABADIE,
Deputy Clerk.

(Endorsed:)

STATE OF LOUISIANA,
Parish of Plaquemines:

RECORDER'S OFFICE.

114 I, the undersigned, recorder in and for the parish of Plaquemines, do hereby certify that according to the records of my office the within and foregoing judgment has been duly recorded in book A of judicial mortgages, folio 245, No. 438, on the 17th day of April, A. D. (1872) eighteen hundred and seventy-two.

In faith whereof I have hereunto signed my name and affixed the seal of my office, at the parish of Plaquemines, this 14th day of February, 1877.

[L. S.] (Signed) A. E. LIVANDAIS,
Recorder.

U. S. circuit court. No. 8116. Exhibit C. Filed Feb. 27th, 1877. F. B. Vinot, d'y clerk.

Filed before me 20th April, 1878.

FRANCIS B. LEE,
Special Examiner.

Filed May 23d, 1878.

F. B. VINOT,
D'y Clerk.

Exhibit D.—Filed February 27th, 1877.

Supreme court of the State of Louisiana.

TUESDAY, *May 31st*, 1870.

115 The court was duly opened. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS.

and

JAMES E. ZUNTS
vs.
W. & H. STACKHOUSE. } No. 2020.

On motion of Randell Hunt and L. Madison Day, of counsel for James E. Zunts, appellee in this cause, and on suggesting to the court that Haywood Stackhouse, one of the appellants in said cause, has died since this appeal was taken, that his succession has been opened in the parish court for the parish of Plaquemines, by his widow, Sarah F. Brooks, who has been appointed and qualified in said court as natural tutrix of his and her minor children; that the said Sarah F. Brooks resides in the parish of Plaquemines; that the affidavit required by the rules of this honorable court has been made, and that the same is now on file in this court; it is ordered by the court that an order do issue, summoning the said Sarah F. Brooks, widow of H. Stackhouse, one of the ap-
116 pellants in this cause and tutrix of her minor children, and representing the succession of her late husband, H. Stackhouse, within twenty-five days from the receipt of said summons.

I hereby certify the foregoing to be a true and faithful extract from the minutes of this honorable court of the day, month, and year first above written.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this eighteenth day of July, anno Domini 1879.

[L. S.] (Signed) ALF. ROMAN,
Clerk.

Exhibit E.—Filed February 27th, 1877.

Supreme court of the State of Louisiana.

SATURDAY, *May* 31, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor Justice Wyly pronounced the judgment and decree
117 of the court in the following case:

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 4019.

On appeal from the fifth district court for the parish of Orleans.

It is ordered that the judgment herein in favor of the defendant be affirmed with costs.

Mr. Justice Morgan, concurring, reserves the right to file his views.

His honor the chief justice dissents and reserves the right to file his reasons.

Mr. Justice Howell also dissents from the majority of the court and concurs with the chief justice.

MONDAY, *December* 1, 1873.

The court was duly opened pursuant to adjournment. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor Justice Morgan pronounced the judgment and decree of the court in the following cases:

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 4019.

118 It is ordered that the rehearing applied for in this case be refused.

The chief justice dissents in this case, and reserves the right to file his reasons therefor, and

Mr. Justice Howell also dissents from the majority of the court, and coneurs with his honor the chief justice.

I hereby certify the foregoing to be true and faithful extracts from the minutes of this honorable court of the days, months, and year first above written.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 19th day of July, A. D. 1879.

[L. S.] (Signed) T. McC. HYMAN,
D'y Clerk.

Exhibit F.—Filed February 27th, 1877.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

119 Be it known that on this sixth day of the month of February, in the year of our Lord one thousand eight hundred and seventy-three, before me, Algernon Sidney Beck, a notary public in and for the parish and State aforesaid, domiciliated in the city of New Orleans, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mistress Sarah F. Brooks, widow of the late Haywood Stackhouse, deceased, of the parish of Plaquemines, in this State, and natural tutrix of her minor children, Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse, issue of her marriage with her late husband, said Haywood Stackhouse, who declared that whereas the succession of her said deceased husband, Heywood Stackhouse, was justly and truly indebted unto the commercial firm of Ernest & Co. of this city in the full sum of fifteen thousand dollars ($15,000.00) for value received in plantation supplies and cash advanced by said Ernest & Co. for the advantage and benefit of said succession to the plantation
120 belonging to said succession, known as the Cedar Grove plantation; and whereas by virtue of and in obedience to an order of the honorable the parish and probate court of the parish of Plaquemines, State of Louisiana, dated 24th January, 1873, issued upon the petition of said appearer, praying for a family meeting of the friends of her minor children, and representing that as the widow in community of her said deceased husband she is jointly and in common with said minors, and her daughter, of legal age, wife of John W. Bryant, and

full sister of said minors, the owner of the property hereinafter described, and that it is necessary that she, said petitioner, be authorized to give and sign in her own behalf as well as in the several capacities of her natural tutrix of her minor children and as the representative duly authorized of the daughter, Mistress Lella Bryant, wife of John W. Bryant, promissory mortgage notes to secure the working of said Cedar Grove plantation, a family meeting of the friends of said
121 minors was held on the 29th January, 1873, before Charles V. Thibaut, recorder of the said parish of Plaquemines, and advised and authorized her for the best interests of said minors to grant a special mortgage in favor of said Ernest & Co., a commercial firm of this city, for the sum of fifteen thousand dollars upon the said plantation hereinafter described, and known as the Cedar Grove plantation; and whereas intervening in the proceedings of said family meeting and being aided and assisted thereto by her said husband, John W. Bryant, Mrs. Lella Stackhouse appeared and authorized the said Mistress Sarah F. Brooks, widow as aforesaid of said Haywood Stackhouse, deceased, to bind her so far as she is personally concerned in consenting to said mortgage.

Now, the said Mistress Sarah F. Stackhouse, in consideration of all the foregoing, and in liquidation of the said indebtedness of fifteen thousand dollars, has this day, acting not only for herself but also as the natural tutrix of her minor children aforesaid, and as the representative or attorney for Mistress Lella Bryant, made, issued and given
122 three certain promissory notes, all dated this sixth day of February, A. D. 1873, drawn to the order of, subscribed, and endorsed by said Mistress Sarah F. Stackhouse, and made payable twelve months after date, one of said notes for the sum of five thousand four hundred and thirty-eight dollars, with interest at the rate of eight per cent. per annum after maturity, one of said notes for the sum of five thousand dollars, and one of said notes for the sum of four thousand five hundred and sixty-two dollars, the two notes lastly described bearing interest from date until paid at the rate of eight per cent. per annum, all of said notes made due and payable at the counting-house of Ernest & Co., in this city, which said three promissory notes, after having been paraphed "Ne varietur" by me, notary, in order to identify the same with this act, were handed unto Frederic Ernest, esq., herein representing his said firm of Ernest & Co., of this city, who hereby acknowledges receipt of the same.

And now, in order to secure the full and punctual payment at
123 maturity of said three promissory notes, with all such eventual interest and costs as may thereon accrue, the said Mistress Sarah F. Stackhouse, acting in her own behalf and as natural tutrix of her minor children, as well as attorney for Mrs. Lella Bryant, and authorized by said petition and order of court and the proceedings of the family meeting aforesaid, does by these presents specially mortgage, affect, and hypothecate in favor of Ernest & Co., who being herein as aforesaid duly represented by their Frederic Ernest, esq., accepts the same to inure to the benefit of any and all legal holder or holders of the said three promissory notes, the property described as follows, to wit:

A certain tract of land situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, cultivated as a sugar plantation, known as the Cedar Grove plantation, now and formerly known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and a half (34½) arpents on the river by forty arpents in depth, bounded above

by the plantation of Octave Reggio and below by the lands of
124 Réné Sarpy, with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining, acquired by the succession of H. Stackhouse as the "New Hope Plantation" in the partition between William Stackhouse and the widow and heirs of H. Stackhouse, as per act passed before Andrew Hero, jr., notary, in this city.

A copy of the family meeting proceedings is hereto attached and made part of this act, and the said Mrs. Sarah F. Stackhouse, for herself and all the parties she herein represents, promises and binds them and herself not to sell, alienate, or deteriorate the property herein mortgaged, and consenting and agreeing that in event of non-payment at their respective maturities of either of said promissory notes, or all of them, the legal holder or holders thereof shall be lawfully entitled to seize and sell under executory process the hereinbefore-described property
125 without appraisement for cash to the highest bidder therefor, the said respective mortgagors as herein represented hereby expressly waiving benefit of appraisement, and hereby confessing judgment in the premises, with interest, cost, and charges.

And the said Mistress Sarah F. Stackhouse further declared that she hereby agrees and binds herself and those whom she herein represents to pay and reimburse unto any legal holder or holders of said promissory notes such lawyers' or attorneys' fees as he, she, or they may incur and pay in the collection thereof in the event of their non-payment at maturity, provided, however, that such fees shall in no event exceed five per cent. of the amount sued upon.

And it is further well understood and agreed by the parties to this act that all premiums, attorneys' fees, costs, charges, etc., are to be paid by said mortgagors, and this mortgage shall be considered as covering and protecting all legal holder or holders of said promissory notes or either of them in the premises.

Said mortgagors further obligating and binding themselves to
126 keep the buildings, sugar-house, machinery, etc., upon said plantation properly insured in some good and solvent insurance company of this city up to the sum of twenty thousand dollars ($20,000.00), and to transfer the policy of insurance to that amount to the holder or holders of said promissory notes, agreeing, in event of failure on their part to cause such insurance to be effected, to pay and reimburse to any holder or holders of said notes such cost and expense he, she, or they may be at in causing insurance on said buildings, sugar-house, machinery, etc., and hereby granting authority unto any holder or holders of said notes to effect such insurance, but not making it compulsory upon them, and exonerating them from all liability for any loss through non-insurance of said buildings, sugar-house, machinery, etc.

And now the said Mistress Sarah F. Stackhouse, declaring that no mortgage stands recorded against the herein mortgaged property, either in the name of her said deceased husband, or in her name, or in
127 the name of Mrs. Lilla Bryant, or in the name of any of said minors, bind and pledge herself to produce to me, notary, within thirty days from this date, a duly-authenticated certificate from the recorder of the parish of Plaquemines, shewing that in the names of the parties above referred to no mortgage or encumbrance stands recorded against the herein-mortgaged plantation at this date.

Thus done and passed at my office in the city of New Orleans, in the presence of Edward Watson and Thomas McCrindell, competent wit-

nesses, of lawful age, who sign these presents with the said appearers and me, notary, the day and date aforesaid.

(Original signed) S. F. STACKHOUSE.
S. F. STACKHOUSE,
As Tutrix and Att'y for Mrs. L. A. Bryant.
FREDERIC ERNEST.
E. WATSON.
T. McCRINDELL.

A. S. BECK, *Not. Pub.*

A true copy of the original act extant and of record in my office in the city of New Orleans (the word "meeting" having been first interlined in this copy).

New Orleans, January 29, 1877.

[L. S.] (Signed) A. S. BECK, *Not. Pub.*

128 UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
Parish of Plaquemines:

Be it known that on this twenty-ninth day of the month of January, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh, by virtue of and in obedience to an order of the honorable the parish and probate court of the parish of Plaquemines, State of Louisiana, dated the twenty-fourth day of January instant, issued upon the petition of Mrs. Sarah F. Brooks, widow of Haywood Stackhouse, of this parish, and natural tutrix of her minor children, Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse, praying for a family meeting of her said minor children, born of her lawful marriage with said Haywood Stackhouse, deceased, representing that she is jointly and in common owner, with her said minor children and her older daughter, wife of John W. Bryant, and sister
129 of said minors, of the following-mentioned community property, viz, a plantation known by the name of Cedar Grove, and situate in this parish, and a tract of land situate in this parish, and known by the name of Moliere Salvant's land.

That in order to settle the affairs and rights of said community respectively, and secure the same, it is necessary, 1st, that a portion of said Moliere Salvant's land be sold by the said natural tutrix, to pay the debt of said community now due, and, 2d, that petitioner be authorized to give and sign in her said capacity, for herself and her said minor children, promissory mortgage notes to a sufficient amount to secure the working out of said plantation and tract of land in favor of Ernest & Co., merchants in New Orleans, who are willing to furnish on that condition all the necessary supplies, means, and moneys for said working out of the same.

Wherefore she prays that a family meeting, composed of near relations, or in their default of friends of said minors, be duly called and held before the recorder of this parish, to give their advice and con-
130 sent, 1s', as to the propriety of authorizing the said natural tutrix to sell at private sale a portion of said Moliere Salvant's land, the said family meeting deciding at the same time which quantity thereof should be sold, and on which terms and conditions, and, 2d, as to the propriety of authorizing petitioner to give and sign promissory notes in favor of Ernest & Co., to such an amount as said family meeting will determine and fix, to secure the necessary supplies, means and

moneys which may be necessary for the working out of "Cedar Grove" plantation, and the payment of said notes to be secured by mortgage on said plantation.

Petitioner further showeth that said Lilla Stackhouse, concurrently with her said husband, John W. Bryant, and by him to that effect duly authorized, as fully appears by her written consent hereto annexed, consents that said family meeting be called and held as aforesaid, for the two purposes as aforesaid, and that so far as she is owner she will abide by and hold herself bound by the deliberation thereof.

131 A certified copy of which petition and order of court and consent is hereunto annexed for reference.

Before me, Charles V. Thibaut, recorder in and for the parish of Plaquemines, therein residing, duly commissioned and sworn and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Messrs. Putnam Brooks, uncle of said minors, Réné Sarpy, Oscar B. Sarpy, Auguste Geoffroy, and Leonard Smith, friends of said minors in default of relatives, all residing in this parish, which said appearers having been duly sworn by me, the recorder, did promise to give their advice and opinion touching the subject-matter of the said petition and order of court for the interest of said minors, and to the best of their knowledge and understanding.

And the members of said family meeting having taken cognizance of the aforesaid petition and order of court which was read, translated and explained to the members of said family meeting, and acknowledging themselves well and fully informed and apprised of the sub-

132 ject matter upon which they are called upon to deliberate and give their advice, did, after mature deliberation, unanimously declared that they are of opinion, and do give it as their advice, that the hereinafter described property, to wit:

A certain tract of land situate, lying, and being in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about twenty-four miles below the city of New Orleans, having and measuring four arpents front on said river, by forty arpents in depth, bounded above by lands of Harry Mahoney, and below by lands formerly belonging to Moliere Salvant and now to the succession of Haywood Stackhouse, together with all the rights, ways, privileges and appurtenances thereunto belonging, being partly the Molière Salvant's tract of land; said family meeting said property to be sold at private sale by the said natural tutrix, Mrs. Sarah F. Stackhouse, on the following terms and conditions, to wit, one-third or one-half cash, and the balance at one, two and three years' credit, in notes secured by special mortgage on the property sold, bearing interest at the rate of eight per cent. per an-

133 num from date of sale until final payment.

And the members of said family meeting further unanimously declared that they are of opinion and do give it as their advice that, for the best interest of said minors, the said natural tutrix be allowed to give and sign in her said capacity promis'ory notes in favor of Ernest & Co., merchants residing in New Orleans, to the amount of fifteen thousand dollars, and payment of said notes to be secured by special mortgage on the said Cedar Grove plantation.

They recommend these measures as being more advantageous to the interest of said minors.

To these presents personally intervened Mrs. Lilla Stackhouse and her husband, John W. Bryant, who does hereby authorize her to that effect, who declared that she consents to abide and be bound, so far as

she is personally concerned, by the deliberation of this family meeting.

And to these presents also appeared Mr. William H. Brooks, undertutor of said minors, who declared that he was present at the deliberation of the foregoing family meeting; that he took cognizance of
134 the documents produced unto the members thereof; he approves of the deliberation aforesaid, finding therein nothing contrary to the interest of said minors.

Thus done and passed, at the parish of Plaquemines, the day, month, and year above written, in the presence of Edgar Dobard and Réné Sarpy, competent witnesses who have signed their names with the members of said family meeting, the other appearers, and me, recorder, after reading of the whole.

(Original signed) P. BROOKS.
O. B. SARPY.
A. GEOFFROY.
LEONARD SMITH.
R. SARPY.
LILLA A. STACKHOUSE BRYANT.
JOHN W. BRYANT.
W. H. H. BROOKS.
E. DOBARD.
R. L. SARPY.

C. V. THIBAUT,
Recorder.

A true copy of the original of record in my office, parish of Plaquemines, this 1st day of February, 1873.

{ SEAL OF OFFICE } (Original signed) C. V. THIBAUT,
{ OF RECORDER. } *Recorder.*

I, Algernon Sidney Beck, a notary public in and for the parish of Orleans, state of Louisiana, duly commissioned and sworn, do here-
135 by certify that the above and foregoing is a true and exact copy of the official copy (duly certified to by C. V. Thibaut, recorder of the parish of Plaquemines, under the official seal and signature) of the proceedings of a family meeting held before said Thibaut, recorder, attached to an act passed before me, notary, February sixth, 1873, wherein the heirs of Haywood Stackhouse executed a mortgage in favor of Ernest & Co., of this city, upon the Cedar Grove plantation described in the proceedings of said family meeting.

In witness whereof I grant these presents under my signature and seal of office this seventeenth day of February, A. D. 1879.

[L. S.] (Signed) A. S. BECK,
Not. Pub.

(Endorsed:) New Orleans, February 6th, 1873. Mortgage of plantation. Heirs of H. Stackhouse to Ernest & Co. U. S. circuit court. No. 8116. Exhibit F. Filed Feb. 27th, 1877. F. B. Vinot, d'y clerk.

Filed before me 20th April, 1878.

FRANCIS B. LEE,
Special Examiner.

136 *Agreement.—Filed February 27th, 1877.*

U. S. circuit court, fifth circuit and district of Louisiana.

SILAS W. SAWYER
vs.
RICHARD R. MONTGOMERY AND LENG & OGDEN. } No. 8116.

It is agreed between counsel that the restraining orders to be issued in this cause shall stand as an injunction, until the trial of the case on the merits, the merits and injunction to be tried together.

(Signed) HERMAN B. MAGRUDER,
Sol'r for Compl't.

(Signed) EUSTIS & LAZARUS,
Att'ys for Def'ts.

Restraining order.—Issued February 27th, 1877.

UNITED STATES OF AMERICA.

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

137 SILAS W. SAWYER
vs.
RICHARD R. MONTGOMERY ET ALS. } No. 8116.

The President of the United States to Richard R. Mountgomery, and Leng and Ogden, a commercial firm composed of John S. Leng and Jonathan Ogden, and J. R. G. Pitkin, United States marshal for the district of Louisiana, greeting:

Whereas it has been represented unto us in our said circuit court on the part of Silas W. Sawyer, in a bill in equity lately exhibited against you and each of you touching certain matters and things therein set forth; and whereas the honorable Edward C. Billings, one of the judges of our said court, upon due consideration thereof, and of the agreement on file, has granted and allowed an order restraining you and each of you immediately and forthwith, and until an application for an injunction can be heard, to the full extent and effect as prayed for in said bill of complaint:

Now, therefore, in consideration of the premises and of the
138 allegations in said bill contained, you, the said Richard R. Montgomery, and Leng and Ogden, and J. R. G. Pitkin, U. S. marshal for the district of Louisiana, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you and each of you absolutely refrain and desist from proceeding under the writ of seizure and sale issued from the said court on the 15th day of December, 1876, in the case entitled Montgomery et al. vs. Stackhouse et als., No. 8028 of the docket of our said court, and from selling or causing to be sold and from advertising for sale the property described in said writ of seizure and sale; and that you, the said Richard R. Montgomery, Leng & Ogden, and J. R. G. Petkin, U. S. marshal, and each of you, your agents, attorneys, and servants, and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 27th day of February,
139 in the year of our Lord one thousand eight hundred and seventy-seven.

[L. S.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Feb. 28th, 1877, by the U. S. marshal, and served copies hereof as follows: R. R. Montgomery & Leng & Ogden on the 28th Feb'y, by handing same to H. L. Lazarus, attorney-at-law, who accepted service of same. Montgomery & Leng & Ogden, I am reliably informed, are not residents of the district of Louisiana.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Richard R. Montgomery.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Richard R. Montgomery to appear before the honorable the judges of the fifth judicial circuit
140 of the United States of America, at a circuit court to be holden on the first Monday of April, 1877, then and there to answer a bill in chancery, filed against him and others, wherein Silas W. Sawyer, a citizen of the State of Louisiana, is complainant, and said Richard R. Montgomery and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 27th day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and the 101st year of American Independence.

[L. S.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of April, 1877; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT.
D'y Clerk.

141 *Marshal's return.*

Received February 28th, 1877, by the U. S. marshal, and on the 28th day of February, 1877, served a copy hereof on Richard R. Montgomery within named, by handing the same to H. L. Lazarus, attorney for said Montgomery, who is not a resident of the district of Louisiana.

(Signed) JOHN FAHY,
D'y Marshal.

Subpœna in chancery to Leng and Ogden.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Leng and Ogden, a commercial firm composed of John S. Leng and Jonathan Ogden, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of April, 1877, then and there to answer a bill in chancery filed against
142 them and others, wherein Silas W. Sawyer, a citizen of the State of Louisiana, is complainant and said Leng and Ogden and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 27th day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and the 101st year of America' Independence.

(Signed) F. B. VINOT,
D'y Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the 1st Monday of April, 1877; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Feb. 28th, 1877, by the U. S. marshal, and on the 28th
143 day of February, 1877, served a copy hereof on Leng and Ogden within named, by handing the same to H. L. Lazarus, attorney at law, New Orleans, who accepted service of the same. Leng & Ogden, I am reliably informed, are not residents of the district of Louisiana.

(Signed) S. W. REED,
D'y U. S. Marshal.

Entry in chancery order book.—Appearance of defendants.

MARCH 13TH, 1877.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

The defendants herein, by their solicitors, Eustis & Lazarus, have this day entered their appearance to the complainants' bill.

Answer of Leng & Ogden.—Filed October 9th, 1877.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

144 To the hon. the judges of the circuit court of the United States for the district of Louisiana. In equity.

The joint and several answer of Leng and Ogden, a commercial firm composed of John S. Leng and Jonathan Ogden, domiciliated and doing business in the city and State of New York, to the bill of complaint of Silas W. Sawyer, plaintiff.

These defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the various and many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say, that they are the holders and sole owners of a certain promissory note, dated at New Orleans, February 6th, 1873, drawn by Sarah F. Stackhouse, in her own right and as natural tutrix of
145 the minors Herbert, Mabel, Blanche, and Maud Stackhouse, and as the attorney in fact of Lillia A. S. Bryant, to their own order and indorsed by themselves, payable twelve months after date, and bearing interest at the rate of eight per cent. per annum from date until paid, for the sum of five thousand dollars, as will more fully appear by reference to said note hereto annexed and made part hereof as Exhibit A.

Your respondents aver that in order to insure the prompt and punctual payment of the note aforesaid, the said Sarah F. Stackhouse in her own right and as natural tutrix of the minors aforesaid, and having been duly authorized to act for them, and as the attorney in fact of Lillia A. Stackhouse Bryant, who was fully empowered and authorized according to law, did on the 6th day of February, 1873, by act before Algernon S. Beck, a notary public in and for the parish of Orleans, in authentic form, mortgage and hypothecate in favor of Ernest & Co., and all legal holders of said note, the following described property, to wit:

146 A certain tract of land situated in the parish of Plaquemine in this State, on the right bank of the Mississippi River, cultivated as a sugar plantation, known as the Cedar Grove plantation now, and formerly known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring twenty-four and one-half (34½) arpents front on the river, by forty arpents in depth, bounded above by the plantation of Octave Reggio, and below by the lands of René Sarpy, with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining.

Your respondents aver that said mortgage contained the usual clauses and the pact de non alienande, and was duly inscribed in the mortgage-office of the said parish of Plaquemine, on the 14th day of February,
1873; that said note secured as aforesaid was due and payable on
147 February 6th, 1874, with interest as aforesaid, all of which will more fully and at large appear by said note duly paraphed to identify it with said act of mortgage, a certified copy of which is hereunto annexed and made part hereof as Exhibit B.

Your respondents aver that Sarah F. Stackhouse, as surviving spouse and widow in community, was duly confirmed as natural tutrix of the minors Herbert, Mabel, Maud and Blanche Stackhouse, the issue of the marriage between Heywood Stackhouse and Sarah F. Brooks. That on the 24th day of January, 1873, said Sarah F. Stackhouse, as widow in community and as natural tutrix to the minors aforesaid, petitioned the hon. the parish and probate court of the parish of Plaquemines for a family meeting of her said minor children, to be authorized among other things to give and sign in her said capacity for herself and her said minors promissory mortgage notes in favor of Ernst & Co., or any legal holder or holders thereof, to such an amount as said family meet-
148 ing may determine and fix upon, to secure the necessary supplies and means and moneys which may be necessary for the working of Cedar Grove plantation, and the payment of said notes to be secured by mortgage on said plantation. That to said petition, Lillia A. Stackhouse Bryant, having first been duly authorized by her husband, joined in said prayer, and bound herself to abide by the deliberations and decisions of the family meeting. That thereupon an order was made by the parish court convoking a family meeting of the relatives of said minors before C. V. Thibaut, parish recorder, to deliberate upon the request of said Sarah F. Brooks.

Your respondents aver that in obedience to the order aforesaid, the friends of said minors in default of relatives convened before the parish recorder, and after being informed of the subject-matter upon which they were called to deliberate and give their advice, did unanimously declare that they were of the opinion that it was for the interest of the minors that the said natural tutrix be
149 allowed to give and sign in her said capacity promissory mortgage notes in favor of Ernst & Co., to the amount of fifteen thousand dollars, and the payment of said notes to be secured by special mortgage on the said Cedar Grove plantation; that intervening in the proceedings of said family meeting and being aided and assisted there by her said husband, Jno. W. Bryant, Mrs. L. A. S. Bryant appeared and authorized the said Mrs. Sarah F. Stackhouse, widow as aforesaid of said Heywood Stackhouse, deceased, to bind her, so far as she is personally concerned, in consenting to said mortgage; that the proceedings aforesaid were duly homologated and approved by the parish and probate court, as will more fully and at large appear by reference to the act of mortgage, and the exhibits thereon referred to, hereto annexed as Exhibit C.

Your respondents aver that the proceedings aforesaid fully empowered and authorized said Sarah F. Stackhouse, as natural tutrix
150 of the minors aforesaid, and as attorney in fact of Lillia A. S. Bryant, to contract said mortgage on behalf of said parties, and that the same is regular in manner and form.

Now, these respondents aver that the note aforesaid became due and payable on the 6th February, 1874, and having made amicable demand for the payment of the same, and upon the failure and refusal to discharge said note, your respondents in conjunction and therein acting with said Richard R. Montgomery, a citizen of Pennsylvania, and a holder and owner of one of the notes issued as aforesaid, and secured by the said mortgage, filed in this court their bill of complaint, with notes and mortgage aforesaid, for executory process, in accordance with the terms and condition' in said mortgage contained, and that thereupon this hon. court granted and issued an order as prayed for in said bill, directing the marshal for the district of Louisiana to seize and sell the

aforesaid property for the satisfaction and payment of the note
151 held and owned by respondents and R. R. Montgomery, their co-complainant in said suit, and that thereupon the marshal did seize and take into his possession the property aforesaid, and was about to advertise the same, when the complainant herein filed his bill of complaint for a writ of injunction, and under which bill a restraining order issued pending his application for an injunction, all of which will more fully and at large appear by reference to record No. 8028 of the docket of this court, made part hereof.

Now, your respondents aver that the property aforesaid, and upon which your respondents' mortgage rests, was acquired by William and Heywood Stackhouse on or about October 15th, 1856, by purchase, as your respondents are informed and believe, and which property they acquired, owned, and enjoyed as joint tenants from the time of said purchase down to the 18th day of December, 1869, when Heywood Stackhouse died, and his individual interest in said property passed by the operation of law to the mortgagors herein, who held and owned the same as tenants in common with William Stackhouse down to
152 the 17th of May, 1872, when William Stackhouse, for and in consideration of certain property held and owned by the heirs of Heywood Stackhouse, in common with him, did bargain, transfer, convey, and exchange his entire individual interest in said Cedar Grove plantation to Sarah F. Stackhouse, widow in community, and to the heirs of Heywood Stackhouse, as will more fully and at large appear by reference to act of compromise and partition, hereto annexed as Exhibits D.

Your respondents aver that after the death of Heywood Stackhouse, to wit, on the 18th day of December, 1869, his succession was duly opened in the parish of Plaquemines; an inventory made of his property, among which was the individual half of Cedar Grove plantation; that Sarah F. Stackhouse, widow in community, was appointed administratrix and confirmed natural tutrix of the minors as heretofore set forth, as will appear from the record of said proceedings.

Now, respondents aver that the complainant herein bases his
153 title to all of the aforesaid property on the recordation of a judgment against William and Heywood Stackhouse eo nomine of the date of the 17th of April, 1872, and on certain proceedings taken by J. E. Zuntz, the owner of said judgment, to enforce the payment thereof.

Your respondents aver that said judgment arises out of a certain suit instituted by William and Heywood Stackhouse against J. E. Zuntz to enjoin him from prosecuting a writ of seizure and sale against certain property owned by them and subject to a conventional mortgage held and owned by said Zuntz, as hereinafter fully detailed and set forth.

Respondents show that William and Haywood Stackhouse purchased the property known as Bellechasse plantation on or about the day of February, 1864, and in part payment thereof gave their notes, secured by mortgage, to one James E. Zuntz for fifty thousand dollars; that said notes became due and payable on or about February 1st, 1866; that said notes were not paid at their maturity, when the holder
154 thereof, to wit, J. E. Zuntz, instituted proceedings for executory process in accordance with the terms and conditions in the act of mortgage. That thereupon said William and Heywood Stackhouse sued out a writ of injunction in the hon. the second judicial district court for the parish of Plaquemines. That upon the hearing of said cause the court dissolved said injunction with 12% damages and interest. That thereupon said W. and H. Stackhouse moved in open

court for an appeal to the hon. the supreme court of the State of Louisiana, which motion was granted, and said appeal made returnable on the fourth Monday of January, 1869, all of which will more fully and at large appear by reference to record No. 18719 of the docket of the fifth district court for the parish of Orleans, to which court said cause was removed by consent of parties.

Respondents further show that pending said appeal, to wit, on the 18th day of December, 1869, Heywood Stackhouse, one of the plaintiffs in said suit for an injunction, died, and that thereupon, and upon
155 motion of counsel for Zuntz, the appellee in said cause, the widow and heirs of Heywood Stackhouse were made parties to said appeal. That said appeal was argued and determined by the hon. the supreme court of La., and a judgment rendered therein reversing and annulling the judgment of the court a quo, and the judgment and cause was remanded to the hon. the fifth district court to be tried de novo, all of which will more fully and at large appear by reference to said transcript of appeal, the motion therein, and the judgment of the court thereon, made part hereof.

Your respondents aver that the decree aforesaid was filed in the hon. the fifth district court on or about Oct. 15, 1871, and said cause was proceeded with in accordance with the directions contained in said decree, and by William and Heywood Stackhouse as plaintiffs in injunction, and against James E. Zuntz, defendant, and that on or about Feb'y 20th, 1872, the hon. the fifth district court for the parish of Orleans, State of La., rendered the following decree:

156 In this case, for the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged, and decreed that there be judgment in favor of defendants; that the injunction herein be dismissed with costs, and that the said defendant, James E. Zunts, do have and recover of plaintiffs, William & Heywood Stackhouse, and their surety on the injunction bond in solido, twenty per cent. damages on the amount of the judgment herein enjoined, together with eight per cent. interest, as allowed on the order of seizure and sale.

It is further ordered that the claim for attorneys' fees herein be dismissed.

Judgment rendered Feb'y 20th, 1872.
" signed March 3d, 1872.
(Signed) CH'S LEAUMONT,
Judge 5th Dist. Court, Parish of Orleans.

Your respondents aver that the aforesaid is an exact and true copy of judgment rendered in the case aforesaid, and that the said judgment was affirmed on appeal by the sup. court of La.; that the
157 judgment was against William and Heywood Stackhouse eo nomine, all of which will more fully and at large appear by reference to record No. 4019 of the docket of the supreme court of La. Your respondents aver that James E. Zuntz, claiming to have a judicial mortgage on the whole of Cedar Grove plantation resulting from the recordation of the judgment aforesaid, enforced said alleged mortgage by a writ of seizure and sale on or about March 5th, 1875, as will appear from a certified transcript of the record of the district court of Plaquemines, No. 2270, and made part hereof, as Exhibit A B.

Now, your respondents aver that said alleged judicial mortgage was operative only on the undivided half of said plantation owned by Will-

iam Stackhouse. That the undivided half on which your respondents have a mortgage was never legally subjected to the judicial mortgage of James E. Zunts, but on the contrary was owned by the parties who made the mortgage in favor of your respondents at the time of
158 said mortgage, and that one undivided half of said plantation was unencumbered or affected by said judicial mortgage.

Now, your respondents aver that they acquired the note aforesaid long prior to its maturity in good faith and for a valuable consideration, and that it ceased to be the property of Ernst & Co. at the time of the purchase aforesaid, and that they never have had said purchase, nor have they now any interest in said note.

Now, your respondents aver that the complainant herein has not now nor never has had a good and sufficient, nor in point of fact any, title to the undivided half of the property aforesaid, for the reasons heretofore set forth, and having a title it was not sufficient in point of law to operate an extinguishment of your respondents' mortgage; and for these and other reasons ought not to have or maintain his injunction against your respondents.

Respondents now plead that the pretended sale referred to in complainant's bill, and under which he claims title to the plantation aforesaid, was not made in conformity with the constitution of the
159 State of Louisiana, and the statute of the State, then in force and operative, and that said plantation was not surveyed, divided, and sold in tracts of from ten (10) to fifty (50) acres, according to the constitution and the law in such case made and provided, but was offered for sale and sold in globo by the sheriff of the parish of Plaquemines under the decree of a court and was made in disobedience of the requirements of the constitution and laws of the State, and therefore absolutely null and void, and of no effect, and passed no title to the purchaser under said sale.

Now, these respondents, severally answering the interrogatories propounded to them in complainant's bill, to the first interrogatory saith that they are informed, and have reason to believe, that the Cedar Grove plantation was offered for sale and adjudicated to Silas W. Sawyer by the sheriff of the parish of Plaquemines

To the second interrogatory respondents sayeth that they are informed, and have reason to believe, that the judgment against William
160 and Heywood Stackhouse and in favor of James E. Zunts was recorded on the 17th day of April, 1872, in the books of the recorder of the parish of Plaquemines.

To the third interrogatory respondents sayeth, if, as answered in the second interrogatory, the judgment against William and Heywood Stackhouse was recorded on the 17th day of April, 1872, then the mortgage granted by Mistress Sarah F. Stackhouse, as tutrix, agent, &c., &c., and under which these respondents claim, it is a fact that it was executed and recorded subsequent to the recordation of the judgment against W. & H. Stackhouse.

To the fourth interrogatory respondents sayeth Sarah F. Brooks, as natural tutrix of the minors Blanche, Herbert, Maud, and Mabel Stackhouse, was authorized to mortgage said plantation by the hon. the parish and probate court for the parish of Plaquemines for the sum of fifteen thousand dollars, and that she did mortgage said property
161 for the amount, and it is under said mortgage these respondents claim; all of which is fully set forth in the body of this answer. As to the mortgage being limited to supplies for 1873, respondents say that they are informed and believe that the same does not appear either in the

process verbal of the family meeting, or in the act of mortgage, and if the same does appear, your respondents as innocent third holders and possessors of the aforesaid note before maturity and for consideration, now, and at all times hereafter reserve the right to demur and object the admissibility of testimony to sustain so much of the aforesaid testimony as tends to impeach and invalidate their mortgage.

To the fifth interrogatory respondents, reserving to themselves now and for all time hereafter, as innocent third holders and owners of the aforesaid note, the right to demur and object to the admissibility of testimony to sustain so much of the aforesaid interrogatory as tends to impeach or invalidate their mortgage, say that they are informed and believe that Ernst & Co. furnished the mortgagors with supplies
162 and other necessaries for cultivating said plantation to an amount equal to the mortgage.

To the sixth interrogatory respondents, reserving to themselves now and for all time hereafter, as innocent third holders and owners of the aforesaid note, the right to demur and object to the admissibility of testimony to sustain so much of the aforesaid interrogatory as tends to impeach or invalidate their mortgage, say that they are informed and believe that Ernst & Co. were not repaid in any manner for their advances, and that the mortgage herein was not extinguished in whole or in part.

To the seventh interrogatory your respondents say that they are the sole and only owners of the note herein described, and which note was the basis of the proceedings referred to in said interrogatory, and that they acquired said note long anterior to its maturity for a valuable consideration and in good faith, without any notice or knowledge of any equities or defences between the mortgagors and the mortgagees;
163 and that Ernst & Co. have not now, nor have they had since respondents acquired said note, any interest of whatever nature in the same, and these respondents have had actual possession and control of said note from the time they acquired the same as aforesaid.

Your respondents aver that the answers to the interrogatories in the complainants' bill are made for the purpose and with the view of expediting the trial of this cause, reserving however the right to demur as if specially pleaded to the discovery, on the ground that your respondents are holders and owners of the aforesaid note in good faith and before maturity and for a valuable consideration.

And these respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter of cause or thing in the said complainants' said bill of complaint contained material or necessary for these respondents to make answer thereto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided
164 or denied is true to the knowledge or belief of these respondents; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray that the relief sought by complainant be denied; that the injunction applied for against respondents be refused, and the restraining order issued herein be revoked and set aside, and that these defendants be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) JOHN S. LENG.
" JONATHAN OGDEN.

(Signed) EUSTIS & LAZARUS,
Solicitors for Respondents.

STATE OF NEW YORK,
City of New York, ss:

On this 25th day of September, 1877, before me personally appeared John S. Leng, and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated
165 to be on his information and belief, and as to those matters he believes them to be true.

(Signed) JOHN S. LENG.

Sworn to before me this 25th day of September, 1877.
[L. S.] (Signed) JOS. M. BULGER,
Notary Public, N. Y.

STATE OF NEW YORK.
City of New York, ss:

On this day of , 1877, before me personally appeared Jonathan Ogden, and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) JONATHAN OGDEN.

Sworn to before me this 22d day of September, 1877.
(Signed) JOHN FRANKENHEIMER,
Notary Public, N. Y. Co.

166 *Answer of Richard R. Montgomery.—Filed October 9th, 1877.*

SILAS W. SAWYER
vs.
R. R. MONTGOMERY. } No. 8116. In equity.

The answer of Richard R. Montgomery, who resides in the city of Philadelphia, and is a citizen of the State of Pennsylvania, to the bill of complaint of Silas W. Sawyer, plaintiff.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the various and many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

That he is the holder and sole owner of a certain promissory note, dated at New Orleans, February 6th, 1873, drawn by Sarah F. Stackhouse in her own right, and as natural tutrix of her minors Herbert, Mabel, Blanche and Maud Stackhouse, and as the attorney in fact
167 of Lillia A. S. Bryant, to their own order, and endorsed by themselves, payable twelve month' after date, and bearing interest at the rate of eight per cent. per annum, from date until paid, for the sum of forty-five hundred and seventy-two dollars, as will more fully appear by reference to said note hereto annexed and made part hereof as Exhibit A.

Your respondent avers that in order to insure the prompt and punctual payment of the note aforesaid the said Sarah F. Stackhouse in her

own right, and as natural tutrix of the minors aforesaid, and having been duly authorized to act for them, and as the attorney in fact of Lillia A. Stackhouse Bryant, who was fully empowered and authorized according to law, did on the 6th day of February, 1873, by act before Algernon S. Beck, a notary public in and for the parish of Orleans, in authentic form, mortgage and hypothecate in favor of Ernst & Co., and all legal holders of said note, the following described property, to wit:

A certain tract of land situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, cultivated as a
168 sugar plantation, known as the Cedar Grove plantation now, and formerly known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and one-half (34½) arpents front on the river, by forty arpents in depth; bounded above by the plantation of Octave Reggio, and below by the lands of René Sarpy, with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining.

Your respondent avers that said mortgage contained the usual clauses and the pact de non alienando, and was duly inscribed in the mortgage office of the said parish of Plaquemines on the 14th day of February, 1873; that said note secured as aforesaid was due and payable on February 6th, 1874, with interest as aforesaid, all of which will more fully and at large appear by said note duly paraphed to identify it with said
169 act of mortgage, a certified copy of which is hereunto annexed and made part hereof as Exhibit B.

Your respondent aver' that Sarah F. Stackhouse as surviving spouse and widow in community was duly confirmed as natural tutrix of the the minors Herbert, Mabel, Blanche, and Maud Stackhouse, the issue of the marriage between Heywood Stackhouse and Sarah F. Brooks; that on the 24th day of January, 1873, said Sarah F. Stackhouse, as widow in community and as natural tutrix of the minors aforesaid, petitioned the hon. the parish and probate court of the parish of Plaquemines for a family meeting of her said minor children, to be authorized, among other things, to give and sign in her said capacity, for herself and her said minors, promissory mortgages notes in favor of Ernst & Co., or any legal holder or holders thereof, to such an amount as said family meeting may determine and fix upon, to secure the necessary supplies and means and moneys which may be necessary for the working of Cedar Grove plantation, and the payment of said notes to be
170 secured by mortgage on said plantation. That to said petition Lillia A. Stackhouse Bryant, having first been duly authorized by her husband, joined in said prayer and bound herself to abide by the deliberations and decisions of the family meeting. That thereupon an order was made by parish court convoking a family meeting of the relatives of said minors before C. N. Thebaut, parish recorder, to deliberate upon the request of said Sarah F. Brooks.

Your respondent avers that, in obedience to the order aforesaid, the friends of said minors, in default of relatives, convened before the parish recorder, and after being informed of the subject-matter upon which they were called to deliberate and give their advice, did unanimously declare that they were of the opinion that it was for the interest of the minors that the said natural tutrix be allowed to give and sign in her said capacity promissory mortgage notes in favor of Ernst & Co. to the amount of fifteen thousand dollars, and the payment of
171 said notes to be secured by special mortgage on the said Cedar Grove plantation. That, intervening in these proceedings of said

family meeting, and being aided and assisted thereby by her said husband, Jno. W. Bryant, Mrs. L. A. S. Bryant appeared and authorized Mrs. Sarah F. Stackhouse, widow as aforesaid of said Haywood Stackhouse, deceased, to bind her so far as she is personally concerned in consenting to said mortgage. That the proceedings aforesaid was duly homologated and approved by the parish and probate court, as will more fully and at large appear by reference to the act of mortgage and the exhibits therein referred to, hereto annexed as Exhibit C.

Your respondent avers that the proceedings aforesaid fully empowered and authorized said Sarah F. Stackhouse, as natural tutrix of the minors aforesaid and as attorney in fact of Lillia A. S. Bryant, to contract said mortgage on behalf of said parties, and that the same is regular in manner and form.

Now, this respondent avers that the note aforesaid became due
172 and payable on the 6th of February, 1874, and having made amicable demand for the payment of the same, and upon the failure and refusal to discharge said note, your respondent in conjunction and therein acting with Leng and Ogden, citizens of New York and holders and owners of one of the notes issued as aforesaid and secured by the said mortgage, filed in this honorable court his bill of complaint, with notes and mortgages aforesaid, for executory process in accordance with the terms and conditions in said mortgage contained, and that thereupon this hon. court granted and issued its order as prayed for in said bill, directing the marshal for the district of Louisiana to seize and sell the aforesaid property for the satisfaction and payment of the note held by your respondent and Messrs. Leng and Ogden, his co-complainants in said suit, and that thereupon the marshal did seize and take into his possession the property aforesaid, and was about to advertise the same, when the complainant herein filed his bill of complaint for a writ of in-
173 junction, and under which bill a restraining order issued pending his application for an injunction, all of which will more fully and at large appear by reference to record No. 8028 of the docket of this court, made part hereof.

Now your respondent avers that the property aforesaid, and upon which your respondent's mortgage rests, was acquired by William and Heywood Stackhouse, on or about October 15, 1856, by purchase, as your respondent is informed and believes, and which property they acquired, owned and enjoyed as joint tenants from the time of said purchase down to the 18th day of December, 1869, when Heywood Stackhouse died, and his undivided interest in said property passed by the operation of law to the mortgagors herein, who held and owned the same as tenants in common with William Stackhouse down to the 17th of May, 1872, where William Stackhouse, for and in consideration of certain property held and owned by the heirs of Heywood Stackhouse in common with him, he did bargain, transfer, convey and ex-
174 change his entire undivided interest in said Cedar Grove plantation to Sarah F. Stackhouse, widow in community, and to the heirs of Heywood Stackhouse, as will more fully and at large appear by reference to act of compromise and partition hereto annexed as Exhibit D.

Your respondent avers that after the death of Heywood Stackhouse, to wit, on the 18th day of December, 1869, his succession was duly opened in the parish of Plaquemines, an inventory made of his property, among which was the undivided half of Cedar Grove plantation. That Sarah F. Stackhouse, widow in community, was appointed admin-

istratrix and confirmed natural tutrix of the minors as heretofore set forth, as will appear from the record of said proceedings.

Now respondent aver' that the complainant herein bases his title to all of the aforesaid property on the recordation of a judgment against William & Heywood Stackhouse eo nomine of the date of the 17th day of April, 1872, and on certain proceedings taken by J. E. Zunts, the owner of said judgment, to enforce the payment thereof.

175 Your respondent avers that said judgment arises out of a certain suit instituted by William and Haywood Stackhouse against said J. E. Zunts, to enjoin him from prosecuting a writ of seizure and sale against certain property owned by them, and subject to a conventional mortgage held and owned by said Zunts, as hereinafter fully detailed and set forth.

Respondent shows that W. & H. Stackhouse purchased the property known as "Bellechasse" plantation on or about the day of February, 1864, and in part payment thereof gave their notes secured by mortgage to one James E. Zunts for fifty thousand dollars; that said notes became due and payable on or about February 1st, 1866; that said notes were not paid at their maturity, when the holder thereof, to wit, J. E. Zunts, instituted proceedings for executory process, in accordance with the terms and conditions in the act of mortgage. That thereupon William and Heywood Stackhouse sued out a writ of injunction in the second judicial district court for the parish of Plaquemines; that

176 upon the hearing of said cause the court dissolved said injunction, with 12% damages and interest. That thereupon said W. & H. Stackhouse moved in open court for an appeal to the hon. the supreme court of the State of Louisiana, which motion was granted, and said appeal made returnable on the fourth Monday of January, 1869, all of which will more fully and at large appear by reference to record 18719 of the docket of the fifth district court for the parish of Orleans, to which court said cause was removed by consent of parties.

Respondent further shows that pending said appeal, to wit, on the 18th day of December, 1869, Heywood Stackhouse, one of the plaintiffs in said suit for an injunction, died, and that thereupon and upon motion of counsel for Zunts, the appellee in said cause, the widow and heirs of Heywood Stackhouse were made parties to said appeal; that said appeal was argued and determined by the hon. the supreme court of La., and a judgment rendered therein reserving and annulling the

177 judgment of the court a qua, and the said case was remanded to the hon. the fifth district court, to be tried de novo, all of which will more fully and at large appear by reference to said transcript of appeal, the motion therein, and the judgment of the court thereon, made part thereof.

Your respondent avers that the decree aforesaid was filed in the hon. the fifth district court, on or about Oct. 15th, 1871, and said cause was proceeded with in accordance with the directions contained in said decree, and by William and Heywood Stackhouse, as plaintiffs in injunction, and against James E. Zunts, defendant; and that on or about Feb'y 20th, 1872, the hon. the fifth district court for the parish of Orleans, State of La., rendered the following decree:

In this case for the reasons assigned in the written opinion of the court, this day delivered and on file, it is ordered, adjudged and decreed, that there be judgment in favor of defendant, that the injunction herein be dissolved with costs, and that the said defendant, James E. Zunts, do have and recover of plaintiffs William and Heywood Stack-

house, and their surety on the injunction bond in solido, twenty
178 per cent damages on the amount of the judgment herein enjoined, together with eight per cent. interest, as allowed on the order of seizure and sale.

It is further ordered that the claim for attorney's fees herein be dismissed.

Judgment rendered Feb'y 20th, 1872.

Signed March 3d, 1872.

(Signed) CH'S LEAUMONT,
Judge 5th Dist. Court Parish of Orleans.

Your respondent avers that the aforesaid is an exact and true copy of judgment rendered in the case aforesaid, and that the said judgment was affirmed on appeal by the supreme court of Louisana; that the judgment was against William and Heywood Stackhouse, eo nomine; all of which will more fully and at large appear by reference to record No. 4019 of the docket of the supreme court of La.

Your respondent avers that James E. Zunts, claiming to have a judicial mortgage on the whole of "Cedar Grove" plantation, resulting from the recordation of the judgment aforesaid, enforced said al-
179 leged mortgage by a writ of seizure and sale on or about March 5th, 1875, as will appear from a certified transcript of the record of the district court of Plaquemines, No. 2270, and made part hereof as Exhibit A. B.

Now your respondent avers that said alleged judicial mortgage was operative only on the undivided half of said plantation owned by William Stackhouse. That the undivided half on which your respondent has a mortgage was never legally subjected to the judicial mortgage of James E. Zunts, but on the contrary was owned by the parties who made the mortgage in favor of your respondent at the time of said mortgage, and that one undivided half of said plantation was unencumbered or affected by said judicial mortgage.

Now this respondent avers that the note secured as aforesaid by the mortgage aforesaid, was given in payment of and to secure supplies and other necessary articles furnished Cedar Grove plantation, for the purpose of cultivating said plantation for the season of 1873, as your respondent is informed and believes; that during said year and subsequent thereto, as your respondent is in-
180 formed, said plantation was under the administration and was being cultivated by the mortgagors therein, and which supplies were furnished, as your respondent is informed and believes, for the purpose of working and cultivating said plantation, and not, as alleged by complainant herein, to secure an alleged indebtedness of Heywood Stackhouse; and your respondent avers that the furnishing of said supplies gave them a rank and privilege superior to all others outside of respondent's privilege as mortgagee.

Your respondent denies that Ernst & Co., as he is informed and believes, were ever repaid or in any manner reimbursed for the supplies so furnished, and which supplies were the basis of respondent's mortgage, and your respondent is informed and believes that Ernst & Co. furnished supplies to an amount equal to the mortgage herein.

Your respondent avers that he is informed and has good reason to believe that the supplies furnished by Ernst & Co., for the
181 purpose of cultivating the plantation for the year 1873, were ample and sufficient, and in all events were equal to the amount of the mortgage herein.

Your respondent denies that Ernst & Co. were repaid for the amount of supplies furnished by them for the year 1873 by shipments of sugar, molasses, rice, &c., received and sold by them, as alleged in complainant's bill, or that said mortgage, which respondent holds in part, was extinguished by said shipments, if any such were made.

Your respondent denies that Ernst & Co. received, sold, and appropriated the proceeds of certain machinery, as alleged in complainant's bill, and this he denies upon information and belief; but, if said Ernst & Co. did receive the proceeds of the machinery as alleged, it was a matter separate and distinct from the furnishing of supplies and the mortgage herein, and in nowise affected the same.

Now, your respondent avers that he acquired the aforesaid note shortly after its maturity, to wit, in the month of 1874,
182 in good faith and for a valuable consideration, and that it ceased to be the property of Ernst & Co. at the time of the purchase aforesaid, and that they never have had since said purchase, nor have they now, any interest in said note; and your respondent avers that the note aforesaid came into his possession at the time that he acquired the same as aforesaid, and has remained in his possession and under his control ever since.

Now, your respondent avers that the complainant herein has not now nor never has had a good and sufficient, nor in point of fact any, title to the undivided half of the property aforesaid, for the reasons heretofore set forth, and having a title it was not sufficient in point of law to operate an extinguishment of your respondent's mortgage; and for these and other reasons ought not to have or maintain his injunction against your respondent.

Respondent now pleads that the pretended sale referred to in
183 complainant's bill, and under which he claims title to the plantation aforesaid, was not made in conformity with the constitution of the State of Louisiana and the statute of the State then in force and operative, and that said plantation was not surveyed, divided, and sold in tracts of from ten (10) to fifty (50) acres, according to the constitution and the law in such case made and provided, but was offered for sale and sold in globo by the sheriff of the parish of Plaquemines, under the decree of a court, and was made in disobedience of the requirements of the constitution and laws of the State, and therefore absolutely null and void and of no effect, and passed no title to the purchaser under the sale.

Now this respondent, answering the interrogatory propounded to him in complainant's bill, to the first interrogatory, sayeth that he is informed and has reason to believe that Cedar Grove plantation was offered for sale and adjudicated to Silas W. Sawyer by the sheriff of the parish of Plaquemines.

184 To the second interrogatory respondent sayeth that he is informed and has reason to believe that the judgment against William and Heywood Stackhouse, and in favor of James E. Zuntz, was recorded on the 17th day of April, 1872, in the books of the recorder of the parish of Plaquemines.

To the third interrogatory respondent sayeth, if, as answered in the second interrogatory, the judgment against William and Heywood Stackhouse was recorded on the 17th day of April, 1872, then the mortgage granted by Mistress Sarah F. Stackhouse, as tutrix, agent, &c., and under which this respondent claims, it is a fact that it was executed and recorded subsequently to the recordation of the judgment against William and H. Stackhouse.

To the fourth interrogatory respondent sayeth that Sarah F. Brooks, as natural tutrix of the minors Blanche, Herbert, Maud, and Mabel Stackhouse, and as the agent of Lillia A. S. Bryant, was authorized to mortgage said plantation by the honorable the parish and
185 probate court of the parish of Plaquemines for the sum of fifteen thousand dollars, and that she did mortgage said property for that amount, in order, as your respondent is informed and believes, to secure supplies to cultivate the plantation for the year 1873, which supplies were furnished by Ernst & Co., and it is under said mortgage that respondent claims; all of which is more fully set forth in the body of this answer.

To the fifth interrogatory respondent sayeth that he is informed and believes that Ernst & Co. furnished the mortgagors with supplies and other necessaries for cultivating said plantation to an amount equal to the mortgage.

To the sixth interrogatory respondent sayeth that he is informed and believes that Ernst & Co. were not repaid in any manner for their advances, and that the mortgage herein was not extinguished in whole or in part.

To the seventh interrogatory respondent sayeth that he is
186 the sole and only holder and owner of the note herein described, and which note was the basis of the proceedings referred to in said interrogatory, and that he acquired said note shortly after its maturity, to wit, during the month of , 1874, in good faith and for a valuable consideration, without any notice or knowledge of the equities or defences between the mortgagors and mortgagees, and that he has had possession of said note since he acquired the same as aforesaid, and that Ernst & Co. have not now nor have they have since respondent acquired said note any interest of whatever nature in the same.

Your respondent avers that the answer to the interrogatories in complainant's bill are made for the purpose and with the view of expediting the trial of this cause, reserving however the right to demur and object as if specially pleaded to the discovery, upon the ground that your respondent is a holder and owner of the aforesaid note in good faith and for a valuable consideration; and this defendant denies all and all manner of unlawful combination and confederacy wherewith he
187 is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this respondent to make answer thereto and not herein and herein well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this respondent.

All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that the relief sought by complainant be denied; that the injunction applied for against respondent be refused, and the restraining order issued herein be revoked and set aside, and that this defendant be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

(Signed) RICHARD R. MONTGOMERY.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

On this seventeenth day of September, 1877, before me appeared personally Richard R. Montgomery, and made oath that he has read

188 the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) RICHARD R. MONTGOMERY.
(Signed) W. W. MONTGOMERY,
Commissioner.

L. S.] (Signed) EUSTIS & LAZARUS,
Solicitors for Respondent.

Notes referred to in answers of Leng & Ogden & R. R. Montgomery.

$5,000$\frac{}{100}$.] NEW ORLEANS, *February 6th*, 1873.

Twelve months after date we promised to pay to the order of ourselves five thousand dollars, with eight per cent. per annum interest from date until paid.

(Signed) S. F. STACKHOUSE.
" S. F. STACKHOUSE,
Natural Tutrix.
" S. F. STACKHOUSE,
Att'y for Mrs. L. A. Bryant.

(Across the face:)
Ne varietur. Secured by mortgage per act passed before me of even date herewith.
(Signed) A. S. BECK,
Not. Pub.

(Endorsed:) Signed, S. F. Stackhouse. Signed, S. F. Stackhouse, as natural tutrix. Signed, S. F. Stackhouse, as att'y for Mrs. L. A.
189 Bryant. No. 8028. U. S. circuit court. Filed Dec. 15th, 1876. Signed, F. B. Vinot, d'y cl'k.

$4,562.00] NEW ORLEANS, *February 6th*, 1873.

Twelve months after date we promise to pay to the order of ourselves forty-five hundred and sixty-two * * * dollars with eight per cent. per annum interest from date until paid.

(Signed) S. F. STACKHOUSE.
" S. F. STACKHOUSE,
Natural Tutrix.
" S. F. STACKHOUSE,
Att'y for Mrs. L. A. Bryant.

(Across the face:)
Ne varietur. Secured by mortgage per act passed before me of even date herewith.
(Signed) A. S. BECK,
Not. Pub.

(Endorsed:) Signed S. F. Stackhouse. Signed S. F. Stackhouse, as natural tutrix. Signed S. F. Stackhouse, as att'y for Mrs. L. A. Bryant. Signed Frederic Ernest. No. 8028. U. S. circuit court. Filed Dec. 15, 1876. Signed F. B. Vinot, d'y cl'k.

Mortgage act and documents attached referred to in answers of Leng and Ogden & R. R. Montgomery as Exhibits B & C.

190 No. . 29 January, 1873. Succession of Heywood Stackhouse. Family meeting for the sale of certain property & for other purposes.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Plaquemines:

Be it known that on this 29th day of January, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh, by virtue of and in obedience to an order of the honorable the parish & probate court of the parish of Plaquemines, State of Louisiana, dated the twenty-fourth day of January instant, issued upon the petition of Mrs. Sarah F. Brooks, widow of Heywood Stackhouse, of this parish, and natural tutrix of her minor children Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse praying for a family meeting of her said minor children, born of her lawful marriage with said Heywood Stackhouse, deceased, representing that she is jointly and in common owner with her said *owner* children, and her elder daughter, Lilla
191 Stackhouse, wife of John W. Bryant and sister of said minors, of the following mentioned community property, viz:

A plantation known by the name of Cedar Grove and situate in this parish, and a tract of land situate in this parish and known by the name of Moliere Salvant's land; that in order to settle the affairs and rights of said community respectively and secure the same it is necessary, 1st, that a portion of said Moliere Salvant's land be sold by the said natural tutrix to pay the debts of said community now due, and 2d, that petitioner be authorized to give and sign in her said capacity for herself and her said minor children promissory mortgage notes to a sufficient amount to secure the working out of said plantation and tract of land in favor of Ernest & Co., merchants in New Orleans, who are willing to furnish on that condition all the necessary supplies, means, and moneys for said working out of the same.

Whereupon she prays that a family meeting composed of near relatives or in their default of friends of said minors, be duly called and held before the recorder of this parish to give their advice and consent,
192 1st, as to the propriety of authorizing the said natural tutrix to sell at private sale a portion of said "Moliere Salvant's land," the said family meeting deciding at the same time which quantity thereof should be sold and on which terms and conditions, and 2d, as to the propriety of authorizing petitioner to give and sign promissory notes in favor of Ernest & Co. to such an amount as said family meeting will determine and fix to secure the necessary supplies, means, and moneys which may be necessary for the working out of Cedar Grove plantation, and the payment of said notes to be secured by mortgage on said plantation.

Petitioner further sheweth that said Lilla Stackhouse, concurrently with her said husband John W. Bryant, and by him to that effect duly authorized as fully appear by her written consent herein annexed, consents that said family meeting be called and held as aforesaid, and that so far as she is owner she will abide by and hold herself bound by the deliberations thereof.

A certified copy of which petition and order of court & consent is hereto annexed for reference.

193 Before me, Charles V. Thibaut, recorder in and for the parish of Plaquemines, therein residing, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Messrs. Putnam Brooks, uncle of said minors, René Sarpy, Oscar B. Sarpy, Auguste Geoffroy, and Leonard Smith, friends of said minors in default of relatives, all residing in this parish, which said appearers having been duly sworn by me, the recorder, did promise to give their advice and opinion touching the subject-matter of the said petition and order of court for the interest of said minors and to the best of their knowledge and understanding.

And the members of said family meeting having taken cognizance of the aforesaid petition and order of court, which were read, translated, and explained to the members of said family meeting and acknowledging themselves well and truly informed and apprised of the subject-matter upon which they are called upon to deliberate and give their advice, did, after mature deliberations, unanimously declare that

194 they are of opinion, and do give it as their advice that the hereinafter described property, to wit:

A certain tract of land situate, lying, and being in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about twenty-four miles below the city of New Orleans, having and measuring four arpents front on said river by forty arpents in depth, bounded above by lands of Henry Mahoney and below by lands formerly belonging to Moliere Salvant and now to the succession of Heywood Stackhouse, together with all the rights, ways, privileges, and appurtenances thereunto belonging, being part of the Moliere Salvant's tract of land, said family meeting said property to be sold at private sale by the said natural tutrix Mrs. Sarah F. Stackhouse, on the following terms and conditions, to wit, one third or one-half cash and the balance at one, two, and three year's credits, in notes secured by special mortgage on the property sold, bearing interest at the rate of eight per cent. per annum from date of sale until final payment.

And the members of said family meeting further unanimously

195 declared that they are of opinion, and do give it as their advice, that for the best interest of said minors, the said natural tutrix be allowed to give and sign in her said capacity promissory mortgage notes in favor of Ernest & Co., merchants residing in New Orleans, to the amount of fifteen thousand dollars, and payment of said notes to be secured by special mortgage on the said Cedar Grove plantation.

They recommend these measures as being more advantageous to the interest of said minors.

To these presents personally intervened Mrs. Lilla Stackhouse and her husband, John W. Bryant, who does hereby authorize her to that effect, who declared that she consents to abide and be bound, so far as she is personally concerned, by the deliberations of this family meeting.

And to these presents also appeared Mr. William H. H. Brooks, under tutor of said minors, who declared that he was present at the deliberations of the foregoing family meeting, that he took cognizance of the documents produced unto the members thereof, he approves of the deliberations aforesaid, finding therein nothing contrary to the interests of said minors.

196 Thus done and passed at the parish of Plaquemines the day, month, and year above written in the presence of Edgar Dobard and René Sarpy, competent witnesses, who have signed their names,

with the members of said family meeting, the other appearers and me, recorder, after reading of the whole.

(Original signed) P. BROOKS.
O. B. SARPY.
A. GEOFFROY.
LEONARD SMITH.
R. SARPY.
LELLA A. STACKHOUSE BRYANT.
JOHN M. BRYANT.
W. H. H. BROOKS.
E. DOBARD.
R. L. SARPY.

C. V. THIBAUT, *Recorder.*

A true copy of the original of record in my office, parish of Plaquemines, this 1st day of February, 1873.

(Signed) C. V. THIBAUT, *Recorder.*

{ SEAL OF RECORDER OF PLAQUEMINES PARISH. }

STATE OF LOUISIANA,
Parish of Plaquemines:

I, Charles V. Thibaut, recorder of mortgages in and for the parish of Plaquemines, State of Louisiana, aforesaid, therein residing, duly commissioned and sworn, do hereby certify that according to the rec-
197 ords of mortgages for this parish up to the date hereof, it appears that there are no other mortgages standing in the name of Mistress Widow Sarah F. Stackhouse and recorded against the Cedar Grove plantation hereinafter described than the following, to wit:

1st. The general mortgage as the natural tutrix of her minor children, as per clerk certificate of inventory, dated the 2d day of June, 1870, amounting to one hundred and twenty-seven thousand three hundred and fourteen dollars ($127,314.00).

Recorded parish of Plaquemines, June 10th, 1870.

2d. The claim of Daniel & James D. Edwards against Mrs. S. F. Stackhouse for account of the Cedar Grove plantation, as per detailed bill from May 27th, 1872, to November 29th, 1872, for the sum of one thousand four hundred and eighty-two $\frac{47}{100}$ dollars.

Recorded parish of Plaquemines, December 13th, 1872.

3d. The claim of J. T. Brooks against Mrs. S. F. Stackhouse, as overseer, as per affidavit under date of February 13th, 1873, for balance due on salary as overseer, the sum of two thousand dollars ($2,000.00).

Recorded parish of Plaquemines, February 13th, 1873.

198 4th. The one granted by Mrs. S. F. Stackhouse in favor of Ernest & Co., as per act of mortgage executed before Algernon Sidney Beck, a notary public of the city of New Orleans, on the sixth day of February, 1873, to secure the full and punctual payment of the sum of fifteen thousand dollars ($15,000.00) in three several promissory notes, drawn by the said Mrs. Sarah F. Stackhouse to the order of and endorsed by herself, dated the sixth day of February, 1873, and made payable twelve months after date, one of said notes for the sum of five thousand four hundred and thirty-eight dollars, with interest at eight per cent. per annum after maturity; one for the sum of five thousand dollars, and one for the sum of four thousand five hundred and sixty-two dollars, the two lastly described bearing interest from date until

paid at the rate of eight per cent. per annum, all of said notes payable at the counting house of Ernest & Co. in the city of New Orleans.

Now, therefore, in order to secure the punctual payment of said
199 notes and all interest to accrue thereon, and reimburse unto any legal holder or holders of said notes such lawyers' or attorneys' fees as they may incur and pay in the collection thereof in the event of their non-payment at maturity, provided, howe'r, that such fees shall in no case exceed five per cent. on the amount sued upon, and all costs, charges, &c., are to be paid by said mortgages and the said mortgage shall be considered as covering and protecting all legal holder or holders of said notes or either of them. Specially mortgaged and hypothecated in favor of said Ernest & Co., or any future holder or holders of said notes, the following described property, to wit:

A certain tract of land situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, cultivated as a sugar plantation, known as the Cedar Grove plantation now, and formerly as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and a half arpents (34½) front on the river, by forty arpents in depth, bounded above by the plantation of Octave Reggio, and below by the lands
200 of René Sarpy, with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining.

Recorded parish of Plaquemines, February 14, 1873.

In faith whereof, I have hereunto set my hand and affixed the seal of my office this fourteenth day of February, A. D. 1873.

(Signed) C. V. THIBAUT,
Recorder.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this sixth day of the month of February, in the year of our Lord one thousand eight hundred and seventy-three, before me, Algernon Sidney Beck, a notary public in and for the parish and State aforesaid, domiciliated in the city of New Orleans, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared
201 Mistress Sarah F. Brooks, widow of the late Heywood Stackhouse, deceased, of the parish of Plaquemines, in this State, and natural tutrix of her minor children, Herbert Stackhouse, Blanche Stackhouse, Mabel Stackhouse, and Maud Stackhouse, issue of her marriage with her late husband, said Heywood Stackhouse, who declared:

That whereas the succession of her said deceased husband, Heywood Stackhouse, was justly and truly indebted unto the commercial firm of Ernest & Co., of this city, in the full sum of fifteen thousand dollars ($15,000), for value received in plantation supplies and cash advanced by said Ernest & Co., for the advantage and benefit of said succession, to the plantation belonging to said succession, known as the Cedar Grove plantation; and whereas, by virtue of and in obedience to an order of the honorable the parish and probate court of the parish of Plaquemines, State of Louisiana, dated 24th January, 1873, issued upon the petition of said appearer, praying for a family meeting of the friends of her said minor children, and representing that, as the widow in community of her said deceased husband, she is jointly and in com-
202 mon with said minors and her daughter of legal age, wife of John W. Bryant, and full sister of said minors, the owner of the property herein described, and that it is necessary that she, said petitioner,

be authorized to give and sign in her own behalf, as well as in the several capacities of natural tutrix of her minor children and as the representative, duly authorized, of the daughter, Mrs. Lella Bryant, wife of John W. Bryant, promissory mortgage notes sufficient to secure the working of said Cedar Grove plantation, a family meeting of the friends of said minors was held on the 29th January, 1873, before Charles V. Thibaut, recorder of the said parish of Plaquemines, and advised and authorized her, for the best interests of said minors, to grant a special mortgage in favor of said Ernest & Co., a commercial firm of this city, for the sum of fifteen thousand dollars, upon the said plantation hereinafter described, and known as the Cedar Grove plantation, and whereas, intervening in the proceedings of said family meeting, and being aided and assisted thereto by her said husband, John W. Bryant, Mis-
203 tress Lilla Stackhouse appeared and authorized the said Mistress Sarah F. Brooks, widow as aforesaid of said Heywood Stackhouse, deceased, to bind her, so far as she is personally concerned, in consenting to said mortgage:

Now, the said Mistress Sarah F. Stackhouse, in consideration of all the foregoing and in liquidation of the said indebtedness of fifteen thousand dollars, has this day, acting not only for herself, but also as the natural tutrix of her minor children aforesaid and as the representative and attorney for Mistress Lilla Bryant, made, issued, and given three certain promissory notes, all dated the sixth day of February, A. D. 1873, drawn to the order and subscribed and endorsed by said Mistress Sarah F. Stackhouse, and made payable twelve months after date, one of said notes for the sum of five thousand four hundred and thirty-eight dollars, with interest at the rate of eight per cent. per annum after maturity, one of said notes for the sum of five thousand dollars, and one of said notes for the sum of four thousand five hundred and sixty-two dollars, the two notes lastly described bearing interest from date until paid at the rate of eight per cent. per annum, all of said notes made
204 due and payable at the counting-house of Ernest & Co., in this city, which said three promissory notes, after having been paraphed ne varietur by me, notary, in order to identify the same with this act, were handed unto Frederic Ernest, esq., herein representing his said firm of Ernest & Co., of this city, who hereby acknowledges receipt of the same.

And now, in order to secure the full and punctual payment at maturity of said three promissory notes, with all such eventual interest and cost as may therein accrue, the said Mrs. Sarah F. Stackhouse, acting in her own behalf and as natural tutrix of her minor children, as well as attorney for Mistress Lella Bryant, and authorized by said petition and order of court and the proceedings of the family meeting aforesaid, does by these presents specially mortgage, affect, and hypothecate in favor of Ernest & Co., who, being herein as aforesaid duly represented by their Frederic Ernest, esq., accepts the same, to enure to the benefit of any and all legal holder or holders of the said three promissory notes, the property described as follows, to wit:

A certain tract of land situated in the parish of Plaquemines,
205 in this State, on the right bank of the Mississippi River, cultivated as a sugar plantation, known as the Cedar Grove plantation, now and formerly known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and a half (34½) arpents front on the river by forty arpents in depth, bounded above by the plantation of Octave Reggio and below by lands of René Sarpy, with all the buildings and improvements

thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining acquired by the succession of H. Stackhouse as the New Hope plantation, in the partition between William Stackhouse and the widow and heirs of H. Stackhouse, as per act passed before Andrew Hero, jr., notary, of this city.

A copy of the family meeting proceedings is hereto attached and made part of this act, and the said Mistress Sarah F. Stackhouse, for herself and all the parties she herein represents, promises and binds them and herself not so sell, alienate or deteriorate the property
206 herein mortgaged, and consenting and agreeing that in event of non-payment at their respective maturities of either of said promissory notes, or all of them, the legal holder or holders thereof shall be lawfully entitled to seize and sell under executory process the hereinbefore described property without appraisement for cash to the highest bidder therefor, the said respective mortgagors, as herein represented, hereby expressly waiving benefit of appraisement and hereby confessing judgment in the premises, with interest, cost, and charges; and the said Mistress Sarah F. Stackhouse further declares that she hereby agrees and binds herself and those whom she herein represents to pay and reimburse, with any legal holders of said promissory notes, such lawyers' or attorneys' fees as he, she, or they may incur and pay in the collection thereof in event of their non-payment at maturity, provided, however, that such fees shall in no event exceed five per cent. of the amount sued upon.

And it is further well understood and agreed by the parties to this act, that all premiums, attorneys' fees, costs, charges, etc., are to
207 be paid by said mortgagors, and this mortgage shall be considered as covering and protecting all legal holder or holders of said promissory notes or either of them in the premises.

Said mortgagors further obligating and binding themselves to keep the buildings, sugar-house, machinery, etc., upon said plantation properly insured in some good and solvent insurance company of this city, up to the sum of twenty thousand dollars ($20,000), and to transfer the policy of insurance to that amount to the holder or holders of said promissory notes, agreeing in event of failure on their part to cause said insurance to be effected to pay and reimburse to any holder or holders of said notes such cost and expense he, she, or they may be at in causing insurance on said buildings, sugar-house, machinery, etc., and hereby granting authority unto any holder or holders of said notes to effect such insurance, but not making it compulsory upon them, and exonerating them from all liability for any loss through non-insurance of said buildings, sugar-house, machinery, etc.

208 And now the said Mistress Sarah F. Stackhouse declaring that no mortgages stand recorded against the herein mortgaged property, either in the name of her deceased husband or in her name, or in the name of Mistress Lella Bryant, or in the name of any of said minors, binds and pledges herself to produce to me, notary, within thirty days from this date, a duly authenticated certificate from the recorder of the parish of Plaquemines, shewing that in the names of the parties above referred to no mortgage or encumbrance stands recorded against the herein mortgaged plantation at this date.

Thus done and passed at my office in the city of New Orleans in the presence of Edward Watson and Thomas McCrindell, competent wit-

nesses of lawful age, who sign these presents with the said appearers and me, notary, the date and day aforewritten.

(Original signed) S. F. STACKHOUSE.
S. F. STACKHOUSE,
As Natural Tutrix and Att'y for Mrs. L. A. Bryant.
FREDERIC ERNEST.
E. WATSON.
T. McCRINDELL.
A. S. BECK, *Not. Pub.*

209 I certify that the above and foregoing is a true and correct copy of the original act of mortgage and of the certified copy of the proceedings of family meeting that authorized the mortgage, and of the mortgage certificate that are attached to said original act, now of record in my office in the city of New Orleans.

Witness my signature and seal of office this twenty-eighth day of September, A. D. 1875.

[L. S.] (Signed) A. S. BECK, *Not. Pub.*

(Endorsed :) No. 8028. U. S. circuit court. Filed Dec'r 15th, 1876. F. B. Vinot, d'y cl'k. New Orleans, February 6th, 1875. Copy of mortgage of Cedar Grove plantation. Succession of H. Stackhouse to Ernest & Co., with copies of attached documents. A. S. Beck, not. pub.

Partition of property between Wm. Stackhouse and succession of Heywood Stackhouse referred to in answers of Leng and Ogden and R. R. Montgomery as Exhibit D.

STATE OF LOUISIANA,
Parish and City of Orleans:

210 Be it known that on this seventh day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States of America the ninety-six', before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the following named persons, residents of the parish of Plaquemines, in this State, viz, 1st, William Stackhouse; 2d, Mrs. Sarah F. Brooks, of lawful age, widow of the late Heywood Stackhouse, late of the parish of Plaquemines, deceased, herein acting as well for herself individually as widow in community of her said deceased husband, as also *as also* in her capacity as the duly appointed and qualified natural tutrix of the minors Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse,

211 issue of her marriage with her said deceased husband, Heywood Stackhouse; and, 3d, Mrs. Lilla Stackhouse, the wife of lawful age of John W. Bryant, and herein duly authorized and assisted by her said husband, who is here also present.

Which said appearers declared that, whereas, in order to fully settle the commercial partnership which formerly existed in this city and State between the said William Stackhouse and said deceased Heywood Stackhouse, and the ordinary which has existed in any years between them relative to the ownership of several plantations in the parish of Plaquemines, in this State, and the working, manage, cultivation thereof, it has been proposed to make a final settlement and partition among said

William Stackhouse and the widow and heirs of said Heywood Stackhouse of all the property belonging to the said copartnership now held and owned by them in common and the payment of the debts thereof, by giving in payment, or setting apart and selling or conveying certain real estate and property unto each of them equivalent in value to the rights and claims of the said William Stackhouse and Heywood Stackhouse against and in their said partnership or common property:

212 And to these ends said William Stackhouse and Mesdames Sarah F. Stackhouse and Lilla Bryant, in their said capacities, entered into the following agreement, viz:

Mem. of proposed settlement and compromise.

1st. Mrs. Stackhouse to have New Hope plantation and all appurtenances, and Moliere tract and all appurtenances, free from date, and cash, $2,500, 3 notes of $5,000 each, payable in 6, 12, and 18 mos., with six per cent. interest from date=15,000.

William Stackhouse to have Belle Chasse Villeré and Live Oak Grove plantations, to assume the payment of all outstanding obligations of W. and H. Stackhouse, including account to Byrnes & Barstow and claims of James E. Zunts.

It being well understood that if the Zunts claim is not recognized by judgment of court Mrs. Stackhouse makes no claim, and William Stackhouse is to have entire benefit; he assumes all charges and claims connected therewith.

The produce now on Live Oak Grove to be shipped to Byrnes &

213 Barstow, and all of the hands, employees, and claims against said plantation and produce to be paid out of the same or by W. Stackhouse except that of Putnam Brooks, which Mrs. Stackhouse assumes.

Mrs. Stackhouse to have all of her furniture and all of her horses, carriages, and everything except farming utensils and corn, &c., attached to plantation.

This to be a full and complete settlement of all the partnership affairs and plantation affairs of W. & H. Stackhouse.

(Signed) M. STACKHOUSE.
JOHN W. BRYANT,
For Mrs. S. H. Stackhouse, subject to her right to disapprove and reject within four days after this date.

We appear and recommend this.

(S'd) CLARKE, BAYNE, & RENSHAW,
Ag'ts J. B. Eustis, for Mrs. Stackhouse.
C. ROSELIUS & ALFRED PHILIPS,
For Wm. Stackhouse.

The three notes above mentioned to bear special mortgage on Bellechasse and Villeré tract and plantation, at eight per cent.

Mrs. Stackhouse to occupy the house, yards, gardens, and servants' rooms on Live Oak Grove, to have the choice of the two pairs of centrifugals complete on Live Oak Grove, to be allowed to remove the two new cisterns on L. O. Grove, to have the levee bend entire, to select four

214 mules from Live Oak Grove. Mrs. Stackhouse to be liable for her personal debts, except such as have been or are represented in any account with Byrnes & Barstow.

(Signed) JOHN W. BRYANT,
For Mrs. S. F. Stackhouse.
W. STACKHOUSE.

That the said William Stackhouse and Mesdames Sarah F. Stackhouse and Lilla Bryant, in their said capacities, considered the contemplated partition and giving in payment highly advantageous to all parties interested, but that on account of the minority of the other heirs of said Heywood Stackhouse it became necessary that a family meeting should take into consideration and decide upon the expediency and propriety of said contemplated petition and sale or giving in payment, with regard to the interest of said minors, and therefore a family meeting of the relatives and friends of the aforesaid minors, Herbert Stackhouse, Blanche Stackhouse, Maud Stackhouse, and Mabel Stackhouse was convened and held before Charles V. Thibaut, parish recorder of said parish of Plaquemines, on the 9th day of April, eighteen hundred and seventy-two, agreeably to an order of the hon. the parish court of Plaquemines, dated 26th of March, eighteen hundred and seventy-two, and rendered in the matter of the succession of said deceased Heywood Stackhouse, and which family meeting unanimously recommended and advised that the contemplated partition and settlement or sale and conveyance of said partnership property should be carried into effect, for the interest of said minors, on the terms specified in the above-mentioned agreement, and moreover made the following appraisement of the property so to be partitioned and sold, viz: The Bellechasse plantation, hereinafter fully described, at the sum of one hundred and fifteen thousand dollars; the Live Oak Grove plantation, hereinafter fully described, at the sum of sixty thousand dollars; the Villeré tract of land, hereinafter particularly described, at the sum of five thousand dollars; the Molière tract of land, hereinafter described, at the sum of seven thousand dollars; and the New Hope plantation, hereinafter described, at the sum of thirty thousand dollars, agreeably to the provisions of section 2359 of the revised statutes of this State, all of which said proceedings were duly approved and homologated by the Hon. W. M. Prescott, judge of the parish court of and for said parish of Plaquemines (in which parish said minors reside), under date of the thirteenth day of April, eighteen hundred and seventy-two, as will more fully appear by reference to a certified copy of said order of court hereto annexed for reference.

Now, therefore, for the purpose of making said partition and settlement of the partnership affairs of the said William Stackhouse and said deceased Heywood Stackhouse, and setting apart and conveying to each his share of the property thereto belonging or heretofore held and owned by them in common, and liquidating and finally settling their respective claims and rights in and to the several partnership which heretofore existed between them, the said appearers severally declared, in their said capacities, that the rights and claims of said William Stackhouse shall be satisfied by his taking in payment therefor the property and effects described as follows, viz:

Share of William Stackhouse.

1st. A certain tract of land cultivated as a sugar plantation and known by the name of "Bellechasse plantation," situate in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about five and a half leagues below the city of New Orleans, and measuring fifty-seven and a half acres front on said river by forty arpents in depth, bounded *bounded* on the upper line by lands of Rosetta Toupon or the cut-off road, and

below by that known as the St. Ann plantation, together with all the buildings and improvements thereon, machinery, apparatus, mules, horses, cattle, hogs, oxen, farming utensils, agricultural implements, carts, and all other movables belonging or appertaining to said plantation, which said plantation was acquired by the said William and Haywood Stackhouse by an act passed before Hugh Madden, late a notary in this city, on the thirteenth day of January, eighteen hundred and sixty-five, and said Bellechasse plantation was appraised by said family meeting at the sum of one hundred and fifteen thousand dollars 115,000.00

2d. A certain plantation situate in said parish of Plaque-

218 Am't brought forward $115,000.00

mines, in this State, known as the Live Oak Grove plantation, on the right bank of the river Mississippi, at about twenty-four miles below the city of New Orleans, having twenty-two arpents front on said river by forty arpents in depth between diverging lines, giving in the rear a width of thirty-four arpents or thereabout, bounded on the lower line by the property of A. Barrois, formerly E. Becknel, and on the upper line by the property known as the Sarah plantation, together with all the buildings thereon, and all machinery and agricultural implements, mules, horses, cattle, hogs, farming utensils, and other appurtenances thereto belonging or appertaining, and also all excess of land which may exist between the aforesaid boundaries without reservation, as well as all the rights to the depth of said plantation beyond forty arpents, the whole agreeably to the titles and without any guarantee for such rights; which said plantation was acquired by said William and Heywood Stackhouse by

219 Am't brought forward $115,000

purchase from Bernard Marigny, by an act passed before Adolphe Boudousquié, late a notary public in this city, on the thirteenth day of March, eighteen hundred and fifty-two, and the same was appraised by said family meeting at the sum of sixty thousand dollars 60,000

3d. A certain tract of land together with all the buildings and improvements thereon, and all rights and appurtenances thereto belonging, known as the "Villerié Place," situate in the parish of Plaquemines, in this State, at about fifteen miles below the town of Algiers (by river), and between eight and nine miles by the cut-off road, on the right bank of the Mississippi River, bounded above by lands of the succession of Constance Larche, and below by lands known as Bellechasse or the cut-off road, and measuring five arpents more or less in front on said Mississippi River, by a depth of forty arpents more or less; the lines open toward the rear, giving an area of three hundred and seventy-eight and $\frac{12}{100}$ acres more or less; the cut-

Am't carried over $175,000

220 Am't brought forward $175,000

off road passing the land being the same portion

of ground designated by the number eight on a plan or sketch made by Wm. Sevey, surveyor, dated August 28th, 1853; which said property was acquired by the said William and Heywood Stackhouse, by purchase from Felix Villeré and the heirs of Hughes Villeré, by act passed before Amédé Ducatel, a notary in this city, on the ninth day of October, eighteen hundred and sixty nine, and the same was appraised by the said family meeting at the sum of five thousand dollars..... 5,000

Making the total appraisement of said three pieces of property above described the sum of one hundred and eighty thousand dollars..... $180,000

But the aforesaid Bellechasse plantation is subject to a conventional mortgage in favor of James E. Zunts for part of the purchase price agreed to be paid for the slaves thereon, and amounting with interest to the sum of seventy-five thousand dollars..... $75,000

Am't carried over..... $75,000 $180,000

221 Am't brought forward..... $75,000 $180,000

And said Live Oak Grove plantation is subject to a mortgage in favor of the Citizens' Bank of La. for various loans and stock-notes with interest, and amounting to the sum of fifty-eight thousand dollars..... 58,000

Making a total sum of one hundred and thirty-three thousand dollars..... $133,000

With which said share of said William Stackhouse is already charged, and subject to which sums and mortgages he accepts the same, thereby reducing the actual value of his said share to the sum of forty-seven thousand dollars..... $47,000

And that the rights and claims of the succession and estate of said Haywood Stackhouse should be settled and satisfied by the said widow and heirs taking therefor the following described property, viz:

Share of the succession of Haywood Stackhouse.

1st. A certain tract of land with all the improve-
222 ments thereon and all rights, ways, privileges, and appurtenances thereto belonging, situate in the parish of Plaquemines, in this State, known as the Moliere tract, on the right bank of the Mississippi River, about twenty-four miles below the city of New Orleans, bounded above by lands of Dr. D. R. Fox and below by lands formerly of William T. Pratt, now known as Sarah plantation, and measuring five arpents front on the Mississippi River by forty arpents in depth, acquired by the said W. & H. Stackhouse by purchase from James P. Waters by an act passed before Joseph Cohen, a notary

in this city, on the 10th of September, 1869, and the same was appraised by the said family meeting at the sum of seven thousand dollars..... $7,000

2°. A certain tract of land situate, lying, and being in the parish of Plaquemines, in this State, on the right bank of the Mississippi River and cultivated as a sugar plantation known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and a half arpents front on

Am't carried over..... $7,000

223 Am't brought forward..... $7,000

on said said river by forty arpents in depth, bounded above by the plantation of Octave Reggio, and below by the lands of René Sarpy, together with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, carts, and all other appurtenances thereto belonging or appertaining, which said plantation was acquired by said W. and H. Stackhouse from Jas. P. Waters, by act before J. Cohen, notary, on 10th January, 1868, and the same was appraised by said family meeting at the sum of thirty thousand dollars..... $30,000

3d. Cash in United States Treasury notes, the sum of twenty-five hundred dollars..... $2,500

And 4°. Three certain promissory notes for the sum of five thousand dollars each, drawn by said William Stackhouse, to the order of and endorsed by himself, dated the sixteenth day of February last past, and payable at six, twelve, and eighteen months

Am't carried over..... $39,500

224 Am't brought forward..... $39,000

respectively, after date, with interest at the rate of eight per annum from date until final payment, said notes amounting together at the sum of fifteen thousand dollars..... 15,000

Making the total appraisement of said property and cash and amount of said notes constituting the share of said widow and heirs of Heywood Stackhouse, the sume of fifty-four thousand dollars..... $54,000

Which is in excess of that of William Stackhouse for the reason that the aforesaid mortgage in favor of J. E. Zunts, and affecting said Bellechasse plantation, is the subject-matter of litigation, and if the same should be decided adversely to said Zunts, the said widow and heirs of said Haywood Stackhouse shall not be entitled to or have any claim or rights to the benefit that would result to said William Stackhouse from said decree, who is to have and enjoy the sole right, benefit, and advantage therewith connected, and pay all charges and claims connected therewith, as also discharge the same in case its validity should be maintained.

225 To have and to hold the said several properties and effects unto the said respective parties, their heirs and assigns, to their and each of their proper use and behoof forever.

And the said Mesdames Sarah F. Stackhouse and Lilla Bryant, in their said capacities, do, moreover, by these presents, sell, transfer, convey,

assign, and set over unto the said William Stackhouse all their right, title, and interest, as well as that of the succession and estate of said deceased, Heywood Stackhouse, of, in, and to the property herein allotted and given to him in payment of his share in said partnership affairs and effects.

And the said William Stackhouse does hereby also sell, convey, transfer, assign, and set over unto the said Mesdames Sarah F. Stackhouse and Lilla Bryant, and the said minors, Herbert Stackhouse, Blanche Stackhouse, Maude Stackhouse, and Mabel Stackhouse, the widow and heirs of said deceased, Haywood Stackhouse, all his right, title, and interest in and to the property herein allotted and given to the succession and estate of said deceased, Haywood Stackhouse, in payment of its share in said partnership affairs and effects.

226 And the said parties do, moreover, in their aforesaid capacities, hereby respectively acknowledge delivery and possession of the several pieces of property and effects allotted and sold to them, and also transfer to each other all the rights and actions of warranty to which they are or in anywise may be entitled against all former owners of the property herein conveyed and transferred unto each other, and subrogating the present owners as herein constituted to the said rights and actions, to be by them and each of them enjoyed and exercised in as full and ample manner to all intents and purposes as need or could be required.

And in order to secure the punctual payment at maturity of the aforesaid three promissory notes of five thousand dollars each, herein given by said William Stackhouse, as well as of all interest to accrue thereon, and in order, furthermore, to secure the payment and reimbursement of any and all lawyers' fees that may be expended or incurred in the event of suit being instituted to enforce the payment of said notes, or either of them, in principal and interest, or any part thereof (which law-

227 yers' fees are fixed at five per cent. on the amount so in suit, and said William Stackhouse consents and agrees to pay and allow the same), the said William Stackhouse hereby specially mortgages, affects, and hypothecates unto and in favor of said widow and heirs of said Haywood Stackhouse, as well as of any and all future owner or owners of said notes or either of them, the hereinbefore mentioned and described Bellechasse and Villeré plantations, promising and binding himself and his heirs not to alienate, deteriorate, or encumber the said property to the prejudice of this mortgage.

And the said William Stackhouse hereby assumes, and binds and obligates himself to pay and discharge any and all outstanding obligations or indebtedness of said copartnerships on the herein described several plantations, including pay of hands, laborers and employees, and the account of Byrnes and Barstow, it being understood that all produce on the Live Oak Grove plantation shall be shipped to and sold by said Byrnes & Barstow, and the proceeds thereof applied to the settlement and extinguishment of such partnership indebtedness; also, that

228 any and all indebtedness of said W. & H. Stackhouse, or either of them, due unto Putnam Brooks, shall be paid and discharged by the widow and heirs of said Haywood Stackhouse; further, that all stock of the Citizens' Bank of Louisiana, attached to the Live Oak Grove and New Hope plantations, are transferred respectively with said plantations to the several transferrees thereof, each of whom assumes the obligations therewith connected as regards the particular numbers of shares attached to the plantations respectively acquired by them hereunder.

And the said parties declared that they dispense with the production of a certificate from the recorder of mortgages of said parish of Plaquemines for annexation hereto, as is otherwise required by law; also that if the said Mesdames Stackhouse and Bryant in their aforesaid capacities be desirous of relieving said New Hope plantation from the stock of the Citizens' Bank thereto attached (whereon all loans have been paid) said William Stackhouse binds himself to assume all the obligations resulting therefrom upon a transfer of their rights in said stock
229 to him, which said election shall be made within thirty days from the date hereof. Further, that Mrs. Stackhouse shall not have the use and occupancy of the dwelling house on Live Oak Grove plantation beyond the 1st day of February ensuing (1873).

And finally, the parties hereto mutually discharge and release each other from any and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, claims and demands whatsoever, in law or in equity, which said William Stackhouse or Heywood Stackhouse and the widow and heirs of the latter ever had or now have, or which either, or their heirs, executors, administrators or assigns hereafter can, shall, or may have by reason of any matter, cause, or thing whatsoever arising out or concerning the several partnerships heretofore existing between said William Stackhouse and Heywood Stackhouse and their joint ownership and management of any and all real estate.

Thus done and passed in my office at New Orleans aforesaid, in the presence of George Cenas and Paul A. Couand, witnesses, both of
230 this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed)

S. F. STACKHOUSE.
LILLA A. BRYANT.
JOHN W. BRYANT.
W. STACKHOUSE.
GEO. CENAS.
P. A. COUAND.

ANDREW HERO, JR.,
Not. Pub

A true copy of the original act (duly stamped) on file and of record in my office.

New Orleans, May 11th, 1872.

(Signed) ANDREW HERO, JR.,
Not. Pub.

Recorded, parish of Plaquemines, this 23d day of May, A. D. 1872.

(Signed) C. V. THIBAUT,
Recorder.

Nine words on the eighth page erased, null.

A true copy from the records of my office. Parish of Plaquemines, July 12th, 1875.

[L. S.] (Signed) C. V. THIBAUT,
Recorder.

(Endorsed:) Copy. 12th July, 1875. Partition of property between William Stackhouse & the succession of Haywood Stackhouse. Parish of Plaquemines. C. N. Thibaut, recorder. Exhibit D.

231 *Record No. 8028, referred to in answers of Leng and Ogden and R. R. Montgomery.*

United States circuit court.

MONTGOMERY ET AL. *vs.* STACKHOUSE ET ALS. } No. 8028.

Bill of complaint.—Filed Dec'r 15th, 1876.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana. In equity.

Richard R. Montgomery, of Philadelphia, and a citizen of the State of Pennsylvania, and Leng and Ogden, a commercial firm domiciliated in the State of New York, and composed of John S. Leng and Jonathan Ogden, both of whom are residents and citizens of the State of New York, bring this their bill for executory process against Sarah F. Stackhouse, in her own right and as natural tutrix of the minors Herbert, Maud, Blanche, and Mabel Stackhouse, of New Orleans, and citizens of the State of Louisiana, and Mistress Lillia A. Stackhouse Bryant,
232 of New Orleans, and a citizen of the State of Louisiana, and thereupon your orators complain and say:

That said Sarah F. Stackhouse, in her own right and as natural tutrix of the minors Herbert, Maud, Blanche, and Mabel Stackhouse, and Lillia A. Stackhouse Bryant, are justly and truly indebted unto your orators in the sum of nine thousand five hundred and sixty two dollars, with interest thereon at the rate of eight per cent. per annum from February 6th, 1873, until paid, for this, to wit:

That your orators are the holders and sole owners of two certain promissory notes, dated at New Orleans, February 6th, 1873, drawn by Sarah F. Stackhouse, in her own right and as natural tutrix of the minors Herbert, Mabel, Blanche, and Maud Stackhouse, and as the attorney in fact of Lillia A. Stackhouse Bryant, to their own order, and endorsed by themselves, both payable twelve months after date, and bearing interest at eight per centum per annum from date until paid, one note for the sum of forty-five hundred and sixty-two dollars, and one for
233 the sum of five thousand dollars, making the total indebtedness on said notes ninety-five hundred and sixty-two dollars, with interest thereon as aforesaid, all of which will more fully appear by reference to said notes hereto annexed as Exhibits A.

Your orators represent that in order to insure the prompt and punctual payment of the notes aforesaid the said Sarah F. Stackhouse, in her own right and as natural tutrix of the minors aforesaid, after having been duly authorized to act for them, and as the attorney in fact of Lillia A. Stackhouse Bryant, who was duly authorized by her husband, John W. Bryant, did, on the 6th day of February, A. D. 1873, by act before Algernon S. Beck, a notary public in and for the parish of Orleans, in authentic form, mortgage and hypothecate in favor of Ernest & Co., and all legal holder or holders of said notes, the following described property, to wit:

A certain tract of land, situated in the parish of Plaquemines,
234 in this State, on the right bank of the Mississippi River, cultivated as a sugar plantation, known as the "Cedar Grove" plantation now, and formerly known as the "New Hope" plantation, and is at a distance of about twenty-three miles below the city of New Orleans,

measuring thirty-four and a half (34½) arpents front on the river by forty arpents in depth, bounded above by the plantation of Octave Reggio and below by the lands of René Sarpy, with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining.

Your orators aver that said mortgage contains the pact "de non alienando" a confession of judgment for the amount of said notes, and a renunciation of the benefit of appraisement in the words and figures following, to wit:

And the said Mistress Sarah F. Stackhouse, for herself and all the parties she herein represents, promises and binds them and
235 herself not to sell, alienate or deteriorate the property herein mortgaged, and consenting and agreeing that in event of non-payment at their respective maturities of either of said promissory notes, or all of them, the legal holder or holders thereof shall be lawfully entitled to seize and sell under executory process the hereinbefore described property without appraisement, for cash, to the highest bidder therefor, the said respective mortgagors as herein represented hereby expressly waiving benefit of appraisement, and hereby confessing judgment in the premises with interest, costs, and charges."

Your orators aver that said mortgage was inscribed in the mortgage office of the said parish of Plaquemines on the 14th day of February, A. D. 1873; that said notes secured as aforesaid were due and payable on February 6th, 1874, with interest as aforesaid; all of which will more fully and at large appear by said notes duly paraphed to identify them with said act of mortgage, a certified copy of which is hereunto annexed and made part hereof as Exhibits B.

Your orators aver that Sarah F. Stackhouse, as surviving
236 spouse and widow in community, was duly confirmed as natural tutrix of the minors Herbert, Blanche, Mabel, and Maud Stackhouse, the issue of the marriage between Heywood Stackhouse and Sarah F. Brooks, and that on the 24th day of January, A. D. 1873, said Sarah F. Stackhouse, as widow in community and as natural tutrix of the minors aforesaid, petitioned the honorable the parish and probate court of the parish of Plaquemines for a family meeting of her said minor children to be authorized, among other things, to give and sign in her said capacity, for herself and her said minor children, promissory mortgage notes in favor of Ernst & Co., or any legal holder or holders thereof, to such an amount as said family meeting may determine and fix upon, to secure the necessary supplies, means, and money which may be necessary for the working of Cedar Grove plantation, and the payment of said notes to be secured by mortgage on said plantation; that to said petition Lillia A. S. Bryant, having first been duly authorized by her husband, joined in said prayer, and bound her-
237 self to abide by the deliberations and decisions of the family meeting; that thereupon an order was made by the parish judge, convoking a family meeting of the relatives (or in their absence friends) of said minors before C. V. Thibaut, parish recorder, to deliberate upon the request of said Sarah F. Stackhouse.

Your orators aver that in obedience to the order aforesaid, the friends of said minors, in default of relatives, convened before Hon. C. V. Thibaut, recorder, and after being well and fully informed of the subject-matter upon which they were called to deliberate and give their advice, did, after mature deliberation, unanimously declare that they were of the opinion, and gave as their advice that it was for the best interests of the minors that the said natural tutrix be allowed to give and

sign, in her said capacity, promissory notes in favor of Ernst & Co. to the amount of fifteen thousand dollars, and payment of said notes to be secured by special mortgage on the said Cedar Grove plantation that intervening in the proceedings of said family meeting, and being aided and assisted thereby, her said husband, John W. Bryant,
238 Mistress Lillia A. Stackhouse Bryant appeared and authorized the said Mistress Sarah F. Stackhouse, widow as aforesaid of said Heywood Stackhouse, deceased, to bind her so far as she is personally concerned in consenting to said mortgage; that the proceedings aforesaid were duly homologated and approved by the hon. the parish and probate court, as will more fully appear by reference to the act of mortgage and the exhibits therein referred to, hereto annexed as part hereof.

Your orators aver that the proceedings aforesaid fully empowered and authorized Sarah F. Stackhouse, as natural tutrix, to contract and mortgage on behalf of her said minors, and that the same is regular in manner and form.

Your orators aver that James E. Zunts claimed to have a judicial mortgage on the whole of said Cedar Grove plantation, enforced said alleged mortgage by a writ of seizure and sale on or about March 6th, 1875; that said alleged judicial mortgage was operative only on
239 the undivided half of said plantation owned by William Stackhouse; that the undivided half, upon which your orators have a mortgage, was never legally subjected to the judicial mortgage of James E. Zunts, but, on the contrary, was owned by the parties who made the mortgage in favor of your petitioners at the time of said mortgage, and that one undivided half of said plantation was unincumbered or affected by said mortgage.

Your orators aver that the notes aforesaid, secured as aforesaid, are now due and owing, and that they have made amicable demand for the payment thereof, and that they, the debtors, have failed and refused to pay the same; and your orators aver that as the legal holders of said promissory notes and mortgage executed in favor of any legal holder or holders thereof they are entitled to an order of seizure and sale on an undivided half of said mortgage premises to pay said promissory notes, and interest, and attorneys' fees.

Your orators, therefore, and in consideration of the premises,
240 pray the benefit of executory process to be issued under said authentic mortgages importing confession of judgment, and that an undivided half of said land above described, with all things thereunto appertaining, be ordered, adjudged, and decreed to be sold according to law; and your orators pray that the writ of seizure and sale issuing herein may be directed to the United States marshal for the district of Louisiana, commanding him to seize and sell, for cash, and without appraisement, and according to law, the one undivided half of the plantation aforesaid, with buildings and improvements thereon, for the purpose of paying your orators the aforesaid sum of nine thousand five hundred and sixty-two dollars, with 8% interest from February 6th, 1873, and five per cent. attorneys' fees and costs of suit.

(Signed) By EUSTIS & LAZARUS,
Solicitors for R. R. Montgomery & Leng & Ogden.

Order.

Let executory process issue as prayed for and according to law.
December 15, 1875.

(Signed) EDWARD C. BILLINGS, *Judge.*

241 *Note by clerk.*

The two notes, marked Exhibits A, and mortgage act, marked Exhibit B, referred to in foregoing bill of complaint, have already been copied, and will be found respectively at pages 188 & 189 et seq. of this transcript.

Notice to Mrs. Sarah F. Stackhouse, in her own right &c., &c.

Circuit court of the United States, fifth circuit, district of Louisiana

MONTGOMERY ET AL. *vs.* STACKHOUSE ET ALS. } No. 8028.

To Sarah F. Stackhouse, in her own right and as natural tutrix of the minors, Herbert, Maud, Blanche, and Mabel Stackhouse:

Take notice payment is demanded of you within three days from the service hereof of the amount specified in the writ of seizure and sale granted on the accompanying bill of complaint, with interest and costs, and in default of payment within that delay the property referred to in said bill of complaint will be seized and sold according to law.

242 A further delay of one day for every twenty miles distance from your domicil to this city, at which place the court is held, is allowed you by law.

Clerk's office, New Orleans, December 15, 1876.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received Dec. 16th, 1876, by the U. S. marshal, and served a copy hereof, with bill of complaint, on Sarah F. Stackhouse, within named, by handing the same to her in person at her domicile, Cedar Grove plantation, parish of Plaquemines, on the 8th of January, 1877.

(Signed) JOHN FAHEY,
D'y U. S. Marshal.

Notice to Mrs. Lillia A. Stackhouse Bryant.

Circuit court of the United States, fifth circuit, district of Louisiana.

MONTGOMERY ET ALS. *vs.* STACKHOUSE ET ALS. } No. 8028.

To Mrs. Lillia A. Stackhouse Bryant:

243 Take notice that payment is demanded of you, within three days from the service hereof, of the amount specified in the writ of seizure and sale granted on the accompanying bill of complaint, with interest and costs; and in default of payment within that delay, the property referred to in said bill of complaint will be seized and sold according to law.

A further delay of one day for every twenty miles distance from your domicil to this city, at which place this court is held, is allowed you by law.

Clerk's office, New Orleans, December 15th, 1876.

[L. S.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Dec. 16, 1876, by the U. S. marshal, and served a copy of this notice, with bill of complaint accompanying, on Mrs. Lillia A. Stackhouse Bryant, by leaving the same with Mrs. Sarah S. Stackhouse, at her domicile at Cedar Grove plantation, Plaquemines Parish, all by direction of plaintiff's attorneys, on the 8th January, 1877.

(Signed) JOHN FAHEY,
D'y U. S. Marshal.

244 *Writ of seizure and sale.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

MONTGOMERY ET AL. *vs.* STACKHOUSE ET ALS. } No. 8028.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded to seize and sell for cash, without appraisement, and according to law, the one undivided half of the following described plantation, to wit:

A certain tract of land situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, cultivated as a sugar plantation, known as the Cedar Grove plantation, now and formerly known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and a half (34½) arpents front on the river by forty arpents in depth,
245 bounded above by the plantation of Octave Reggio and below by the lands of René Sarpy, with all the buildings and improvements thereon, for the purpose of paying the plaintiffs, Richard R. Montgomery and Leng and Ogden, the sum of nine thousand five hundred and sixty-two dollars, with interest thereon, at eight per centum per annum, from February 6th, 1873, five per cent. attorney's fees, and costs of suit.

And what you do in the premises you make due return thereof, together with this writ, to our said court, according to law.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at New Orleans, this 15th day of December, A. D. 1876.

[L. S.] (Signed) F. B. VINOT,
D'y Clerk.

(Endorsed:) U. S. circuit court. No. 8028. Montgomery et al. vs. Stackhouse et als. Writ of seizure and sale. Received Dec. 16, 1876, by the U. S. marshal, and—No stock, only pl't'n seized. Jan 20.

246 MEMO. BY CLERK.—Exhibit A B, referred to in answers of Leng & Ogden and R. R. Montgomery, has already been copied, and will be found at pages 25 et seq. of this transcript.

Entry in chancery order book, October 9th, 1877.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

Leng & Ogden and Richard R. Montgomery, defendants herein, have this day, by their solicitors, Eustis & Lazarus, filed their several answers to the complainant's bill of complaint.

Replication.—Filed November 20th, 1877.

Circuit court of the United States, fifth circuit and district of Louisiana.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

247 The replication of Silas W. Sawyer, complainant, to the joint and several answers of R. R. Montgomery and Leng & Ogden, defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer *sus*tained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) RICHARDSON & MAGRUDER,
Solicitors for Compl't.

Entry in chancery order book 29th November, 1877.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

248 The complainant hath this day, by his solicitors, Richardson & Magruder, filed his replication to the answer of the defendants.

Motion and order.—Francis B. Lee appointed special examiner.—Extract from minutes of 21 March, 1878.

November term, 1877.

NEW ORLEANS, *Thursday, March* 21, 1878.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

SILAS W. SAWYER
vs.
LENG & OGDEN & R. R. MONTGOMERY. } No. 8116.

On motion of Richardson & Magruder, solicitors for complainant

herein, and on suggesting to the court that they desire the testimony in this cause to be taken orally, it is ordered that Francis B. Lee, esq., be appointed special examiner to take testimony in this cause.

Marshal's return.

Received, March 27th, 1878, by the United States marshal, and
249 on the 27th day of March, 1878, served a true copy hereof on Francis B. Lee, esq., by handing the same to him in person in this city.

(Signed) W. G. ELLIOTT,
D'y Marshal.

Motion and order for subpœna duces tecum.—Filed March 30, 1878.

U. S. circuit court, fifth circuit and district of Louisiana.

SILAS W. SAWYER
vs.
RICHARD R. MONTGOMERY ET ALS. } No. 8116.

On motion of Richardson & Magruder, solicitors for complainant, and on suggesting to the court that the books of the late commercial firm of Ernst & Co. for the years 1872 and 1873 are necessary to support their demand, and that F. Ernst, of said firm, is custodian of said books, it is ordered that said F. Ernst produce said books before Francis B. Lee, special examiner in this case, on or before Friday, the 5th day of April, 1878, and from time to time and on such occasions as said examiner may call for the same.

250 I have no objection to said order being granted.

(Signed) H. L. LAZARUS,
Solicitor for Respondent.

Order.

Let the subpœna duces tecum issue as prayed for.
March 30th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Subpœna duces tecum to F. Ernst.

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

The President of the United States to F. Ernst:

You are hereby commanded to be and appear and bring with you the books of the commercial firm of Ernst & Co. for the years 1872 and 1873, before Francis B. Lee, esq., special examiner of the circuit court of the United States for the 5th circuit in and for the said district, at his office, in the city of New Orleans, on or before Friday, the 5th
251 day of April, 1878, then and there to be used in evidence in a certain cause now pending therein, and to be tried, between Silas W. Sawyer vs. Richard R. Montgomery, at 11 o'clock a. m., and herein fail not under penalty of two hundred and fifty dollars.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 30th day of March, in the year of our Lord one thousand eight hundred and seventy-eight, and in the 102d years of American Independence.

[L. S.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received, March 30, 1878, by the U. S. marshal, and on the 1st day of April, 1878, served a true copy hereof on F. Ernest by handing the same to him in person in this city.

(Signed) W. G. ELLIOTT,
D'y Marshal.

Order to publish and close testimony and to set down cause for trial.—Extract from minutes of 4th May, 1878.

252 April term, 1878.

NEW ORLEANS, *Saturday, May 4th*, 1878.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

On motion of Richardson & Magruder, solicitors for complainant in the above-entitled cause, and on suggesting that the time for taking testimony has expired, it is ordered that the time for taking testimony be closed, the testimony be published, and this cause be fixed for trial on Friday, 17th instant, at 11 a. m., and that defendants be notified.

Motion and order, defendants allowed till 30th May, 1878, to take testimony, &c., &c., &c.—Entered and filed May 20, 1878.

U. S. circuit court, district of La.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

253 On motion of Kelly & Lazarus, solicitors for defendants, and on their suggesting to the court that publication has passed herein before the testimony of the defence was taken, and that they were prevented from taking said testimony from being under the erroneous belief and impression that the facts they wished to establish by said testimony would be admitted by the plaintiff's solicitors, and that the said solicitors have since refused to make the admissions which solicitors for complainant were led to believe they would make through misapprehension and misunderstanding, and on their further suggesting that it has thus become material to the ends of justice in this cause that said testimony should be taken, and the court considering the accompanying affidavit, it is ordered that defendants be allowed until 30th instant to take testimony in this cause, and that Francis B. Lee be appointed special examiner to take said testimony.

Henry L. Lazarus, being sworn, says that he is one of the solicitors for defendants in this cause, and that the matters suggested in the foregoing motion are true.

(Signed) H. L. LAZARUS.

254 Subscribed and sworn before me May 20th, 1878.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court.

H. L. Lazarus, being sworn, deposes and says that he informed and gave notice to H. B. Magruder, one of complainant's solicitors, that he would move the above motion this day in open court.

(Signed) H. L. LAZARUS.

Sworn to and subscribed before me May 20th, 1878.

(Signed) K. LOEW,
Dy Clerk.

Testimony taken before special examiner Francis B. Lee.—Filed May 23d, 1878.

U. S. circuit court.

S. W. SAWYER
vs.
R. R. MONTGOMERY. } No. 8116.

Testimony taken before special examiner Francis B. Lee, under an order of court of date 27th March, 1878.

255 Complainant introduces in evidence:

1st. Executory proceedings vs. W. & H. Stackhouse, in the 5th D. C., parish of Orleans.

2d. Injunction of W. & H. Stackhouse.

3d. Judgment of 5th D. court.

4th. Appeal to supreme court.

(It is admitted that H. Stackhouse died in 1869.)

5th. Affidavit and rule suggesting death of H. Stackhouse, and praying to make his legal representatives parties under Rule XIII of supreme court of La.

6th. Rule XIII of supreme court of La.

7th. Decree of supreme court remanding the case.

8th. Certified extracts from record No. 4019 of the supreme court of the State of Louisiana, to show that the widow and tutrix and major heirs of H. Stackhouse appeared in lower court by counsel.

(Objected to by respondents on the ground that a foundation for that character of evidence has not been laid.)

9. Decree of lower court in favor of Zuntz.

10. Petition for appeal by William Stackhouse and widow and tutrix and major heir of H. Stackhouse.

11. Appeal bond signed by same parties.

256 12. Decree of supreme court.

13. Certificate of recorder of parish of Plaquemines, showing date of recordation of this decree of supreme court of Louisiana.

14. Records showing Zuntz proceedings in parish of Plaquemines to execute the last mentioned judgment.

15. Sheriff's proces verbal and adjudication to Sawyer. Certificate of record in clerk's office, and record in conveyance office.

16. Act of mortgage to Ernest & Co., dispensing with certificate and proceedings of family meeting thereto attached.

FREDERICK ERNEST examined on behalf of complainant:

I am acquainted with all the parties to this suit. I am a member of the late firm of Ernest & Co. On the 6th February, 1873, my firm took a mortgage on Cedar Grove plantation.

Q. What was the object of that mortgage?

(Objected to by respondents on ground that the object of the mortgage being declared in the act of mortgage is a matter of record
257 to be proved by the record alone.)

The mortgage was to secure any cash balances which might be due Ernest & Co. during the time they did business with plantation, or which might be due on final settlement. At the time of the death of Heywood Stackhouse he did not owe me anything; I did not know him; I never saw him; Mrs. Stackhouse and Cedar Grove plantation contracted debts before the granting of the mortgage of Feb'y 6th, 1873.

Q. Had she an order of court authorizing her to contract these debts prior to said mortgage?

(Objected to on ground that the fact of order of court vel non must be proved, if at all, by the order itself in the records of the court, and not by parol.)

Ans. I don't know.

One of the mortgage notes given under the order of the court was transferred to H. P. Kernochan as collateral security for indebtedness of Ernest & Co., as per written pledge to H. P. Kernochan. The other was transferred to R. R. Montgomery, as collateral security for indebtedness of Ernest & Co. to him. The third one I have in my possession.

258 Q. Did you charge 2½ % commission for endorsing these notes?

(Objected to as irrelevant, and on the further ground that Leng & Ogden are innocent third possessors before maturity and for a consideration, and not affected with any equities between the original parties to notes.)

Ans. I charged commissions for endorsing certain notes of Wm. Stackhouse placed in hands of Ernest & Co. for negotiation for the credit of Mrs. S. F. Stackhouse. To my recollection no commission was charged for endorsing the mortgage notes given to Ernest & Co, if so endorsed.

Q. Did you advance to Cedar Grove plantation fifteen thousand dollars of necessary supplies during the year 1873, beginning Febr'y 6th?

(Objected to as irrelevant and for further ground that Leng & Ogden, one of the respondents, is the holder of one of the notes, the execution of which is enjoined before maturity and for a valuable consideration, and is not affected with any equities existing between original parties to notes.)

Ans. From the time the mortgage was given the advances made
259 by Ernest & Co. before anything was realized from sales of products must have nearly amounted to the amount of the mor gage.

Q. Did you devote the proceeds of all the three notes given under said mortgage, dated Feb'y 6, 1873, to the payment of yourself for supplies furnished to Cedar Grove plantation during the year 1873?

(Objected to on same grounds as urged to last question objected to.)

Ans. I did not. The proceeds of one of the notes ($5,438) was cred-

ited to Cedar Grove plantation, balancing the account to date of mortgage of Feb'y 6th, 1873. This amount was credited for indebtedness accruing prior and up to Feb'y 6th, 1873. I credited the proceeds of a steam train to the account of Mrs. S. F. Stackhouse, cash $500, Jan'y 9th, 1874. Cash, $2,175.17; proceeds of S. W. Sawyer's note for $2,500, 312 days discount, Jan'y 10th, 1874.

Q. What application did you make of the proceeds of the other two notes?

(Objected to for Leng & Ogden on same grounds as stated in last objection.)

260 A. On Feb'y 16th, 1874, Mr. S. F. Stackhouse owed Ernest & Co. $835.94, and note due Feb'y 6-9, 1874; mortgage note $5,438, and Cedar Grove plantation on open account, $3,311.90; total $9,585.44. The two remaining notes of the three mortgage notes were used by Ernest & Co., as they about equalled this indebtedness of $8,585.44.

Witness states in account marked A A. No. 4, now introduced in evidence by plaintiff, the second item on said account, wherein it appears that 2½ % commissions for endorsing mortgage note is an error, the word "endorsing" should be replaced by "negotiating and passing to credit."

Document marked B B introduced in evidence.

Q. Did all these supplies go for the cultivation and improvement of the Cedar Grove plantation?

A. They did; and for family necessities.

Q. They went towards the improvement of the entire plantation?

A. To my knowledge they did. There was the schooling also, and the groceries for the family. I know nothing but absolute necessities that were paid for.

261 Q. Do you include schooling among the necessities?

A. Yes, sir; because there was drawn drafts for schooling.

Q. Do you recollect the amount?

A. No, sir; but they were small drafts.

Q. What about the items which you advanced to Bryant?

A. I advanced to Bryant nothing. I just paid the drafts drawn for the money, and he took the money to pay the hands. I advanced it to the plantation. Personally I paid him nothing.

Q. Did you advance all the supplies for 1873?

A. Ah, I don't know. I advanced all that I could.

Q. Did you ever advance anything to that plantation prior to 1872?

(Objected to as totally irrelevant.)

A. There was nothing advanced prior to the account rendered; prior to the account A A & B B. That is the whole history of the accounts.

Q. I simply want to reiterate one question—None of this money was due you by Heywood Stackhouse at his death—no money?

(Objected to so far as concerns the note of Leng & Ogden, on
262 the ground that they held the note before maturity, and for a valuable consideration.)

A. No, sir; if he died in 1869, nothing was due.

Cross examination by Mr. LAZARUS:

Q. This mortgage was given to you on the 6th of February, 1873, for $15,000, I believe?

Ans. Yes, sir.

Q. There were three notes, were there not?

Ans. Three notes.

Q. How much each?

A. Well, one $5,438.00, one $5,000.00, and one $4,562.00, payable each of them twelve months after date?

Q. So they all matured on February 6-9, 1874?

A. They all matured at that time.

Q. These notes were given to you for supplies furnished Cedar Grove plantation for the year 1873?

A. For supplies already furnished and to be furnished.

Q. Which of the three notes do you hold and have in your possession at the present time?

A. The one of $5,438. I think that is it.

263 Q. The other two notes are held and owned by whom?

A. One by H. P. Kernoghan as agent, and the other by Richard R. Montgomery.

Q. Do you know who Mr. H. P. Kernoghan is agent for?

A. For Leng & Ogden.

Q. Do you know when Leng & Ogden acquired their note through Kernoghan, their agent?

A. I don't.

Q. Was it before or after its maturity?

A. It was before its maturity, according to my recollection.

Q. The accounts that you refer to in your direct examination were rendered to the parties at the date which they purport to be?

A. Yes, sir.

Q. Was there any exception taken to them at the time or since?

A. No, sir; none whatever. The account rendered means that it was sent to the parties.

Q. Rendered and not objected to?

A. Yes, sir.

Q. Do you know whether they received those accounts?

A. I know they were mailed to them, and never returned to me.

Q. The proceeds of those two notes were carried on the account?

264 A. N , sir; a memorandum is put on the account. They are not carried on the account, the two notes that were out. It shows a balance due me for so much against each of these two notes which I have used.

Q. When those two notes are paid your account will be balanced?

A. Fully.

Q. Fully balanced?

A. Yes, sir; if paid in full.

Q. If they are not paid then the Stackhouse succession, Mrs. Stackhouse as widow and tutrix, will owe you so much money for supplies?

Ans. Exactly.

By Mr. MAGRUDER:

Q. That is, you mean by that, they will hold the holder of those notes?

A. Yes, sir.

Mr. H. H. BROOKS sworn for the complainant.

Direct examination by Mr. MAGRUDER:

Q. Are you the under tutor of the minors Stackhouse?

A. Mrs. S. S. Stackhouse's children?

Q. Yes.

Ans. Yes, sir.

265 Q. Were you present at a family meeting held on or about the

9th of February, 1873, in the parish of Plaquemines, before Thibaut, recorder?

A. Yes, sir.

Q. As under tutor, in the succession of Haywood Stackhouse, of these minor children?

A. There was a family meeting held there as near as I can remember, and I was present. It was held at the Live Oak Grove, parish of Plaquemines.

Q. Was that family meeting authorized to grant a mortgage on certain property?

(Objected to on the ground that whether the family meeting was authorized or not to grant a mortgage, it must appear by evidence of record in the proceedings in this succession, and is not susceptible of proof or disproof by parole.)

Ans. It was.

Q. On what property?

A. Cedar Grove plantation.

Q. What was the object of that mortgage?

(Objected to on the ground that the order of court under which the family meeting was held is the only evidence admissible to show the object of the granting of the mortgage.)

A. Well, the object of that family meeting was to give Ernest
266 and Co. a mortgage of $15,000 for the purpose of carrying on the crops of 1873 of sugar and molasses.

Q. You signed it with that distinct understanding?

A. With that distinct understanding I signed it.

Q. Did Ernest & Co. furnish that $15,000 to the plantation?

(Objected to on the ground that Leng and Ogden are the owners of this mortgage note before maturity and for a valuable consideration, and whether they furnished the supplies or not is a matter of indifference.)

A. To the best of my belief he didn't. Of course I didn't keep the accounts, and I couldn't tell the exact amount, but I think he refused to pay the first or second installments of the labor, the drafts of which I have in my possession that he refused to pay.

Q. Was either of these three mortgage notes paid to your knowledge?

A. No, sir; the crop was shipped to him. What became of them I don't know. I didn't attend to the business, but Ernest failed
267 to furnish the supplies; other parties had to furnish them. I went to Ernest & Co. myself and he refused to furnish any further supplies.

Q. Did he furnish supplies enough to furnish that place for 1873?

A. No, sir; he didn't.

Q. You were compelled, then, to resort to other commission merchants?

A. Yes, sir.

Q. He didn't furnish enough supplies to run that plantation?

A. No, sir.

Cross-examination by Mr. KELLY:

Q. Do you know, Mr. Brooks, what amount was furnished to this plantation by Ernest & Co. in money & supplies?

A. The whole amount—I don't.

Q. You don't know how much was furnished?

A. No, sir.

Q. In the certified copy of the proceedings of the family meeting I

find the name of W. H. H. Brooks. Did you sign the proceedings of that meeting, Mr. Brooks?

A. Yes, sir; I was present and signed it.

Q. Of course you knew what you were signing when you signed this?

268 A. That document? I don't know that I ever saw that document. This ain't the document that I signed.

Q. This purports to be an authentic copy.

A. Oh, that's all right.

Q. You knew what you signed when you signed the family meeting?

A. Yes, sir.

Q. You state in your own examination-in-chief that Mr. Ernest refused to honor drafts in your possession?

A. Yes, sir.

Q. To whom did Stackhouse ship the balance of that crop after that occurrence?

A. The balance and all the sugar and molasses was shipped to him.

Q. None was shipped to anybody else?

A. No, sir.

Q. Did she get advance from anybody else?

A. She got advances on the rice and we shipped the rice to others.

Q. Wasn't the rice the biggest portion of that crop?

A. It had to be. There was no money to pay the sugar hands.

Q. You made very little sugar and molasses?

A. I didn't.

Q. I mean Mrs. Stackhouse.

A. Yes, sir.

269 By Mr. MAGRUDER:

Q. State why you made little sugar and molasses.

A. Because Mr. Ernest refused to advance the cost. Mrs. Stackhouse could get hands to work for part of the rice, but she couldn't get them to work for part of the sugar.

Q. Have you got that draft which Ernest & Co. refused to pay?

A. Yes, sir.

Q. Will you produce that draft?

(Objected to.)

Q. Did you present that identical draft to Ernest & Co.; if so, when and what was the answer Ernest & Co. made you?

A. J. W. Bryant presented that identical draft, which they refused to pay. I presented it afterwards and it was refused.

Q. Were you present with Mr. Bryant when he presented it?

A. No, sir; I presented the draft to Mr. Ernest also.

Q. On or about what time?

A. Well, it must have been in March, 1873. They wanted the money to pay the labor.

Q. Did he refuse to pay it?

270 A. Yes, sir, and I took the draft back home again.

Q. Did he accept it?

A. No, sir; he wouldn't accept it. He said he couldn't and wouldn't pay it, and wouldn't advance another dollar.

(Draft C C offered in evidence.)

Agreement.

It is agreed by counsel that documents A A and B B, being copies of accounts from the books of Ernest & Co. with Cedar Grove plantation

and Stackhouse, may be compared with the books and corrected if found erroneous in any particular.

U. S. circuit court, district of Louisiana.

SILAS W. SAWYER
vs.
RICHARD MONTGOMERY ET ALS. } No. 8116.

This is to certify that I, Francis B. Lee, appointed by an order of the honorable the circuit court of the United States for the district of Louisiana special examiner in the above case, a copy of which order is hereto annexed for reference, did, at the solicitation of the complainant herein, cause to appear before me Frederick Ernest, of this city,
271 and W. H. H. Brooks, who, being duly sworn by me as such special examiner to give full, true, and correct answers to the questions to be propounded to them, and in that regard to tell the truth, the whole truth, and nothing but the truth, did, in my presence, in answer to interrogatories orally propounded to them then and there by counsel for complainant and by counsel for respondent, testify in substance as contained in the foregoing pages, which answers were taken down in my presence and that of the witnesses and opposing counsel.

That the documents introduced in evidence, and not referred to in or connected with the testimony of the witnesses, are stated and set forth in the note of evidence which is attached hereto and preceeds the testimony, those of the documents introduced which were actually filed being marked as such by me as such special examiner.

Thus done and passed at my office, No. 29 Carondelet street, in this city of New Orleans, on this the 20th day of April, 1878.

(Signed) FRANCIS B. LEE,
Special Examiner.

272 *Order annexed to certificate of Special Examiner F. B. Lee.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.
November term, A. D. 1877.

NEW ORLEANS, *Thursday, 21st day of March*, 1878.

Court met pursuant to adjournment. Present, the honorable Edward C. Billings, district judge.

SILAS W. SAWYER
vs.
RICHARD MONGTOMERY ET ALS. } No. 8116.

On motion of Richardson & Magruder, solicitors for complainant herein, and suggesting to the court that they desire the testimony in this cause to be taken orally, it is ordered that Francis B. Lee, esq., be appointed special examiner to take testimony in this cause.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 27th day of March, 1878.

[L. S.] (Signed) F. B. VINOT,
D'y Clerk.

273 **No. 1.**

Cedar Grove Plant'n, in a/c current and interest @ Nov. 11th, with Ernest & Co.

1872.				
May	7	To cash for labor	$438	29
"	11	" invoice (3 brls. pork) p'r Farmer	43	46
	15	" do. (4 brls. corn meal) p'r Sallie V	16	03
	24	" cash s'ght dr'ft, J. A. Wagner	79	30
	25	" " " " Jno. Clark	918	
	23	" accept'ce D. & J. Edwards, July 23	2,000	
		Comms. accepting do. 2½%	50	
	31	" cash s'ght dr'ft, J. A. Bryant	200	
		" " " " A. J. Crippin	31	56
June	4	" " " " st'r Bradish Johnson	34	10
		" " " " Samuels & Knoop	112	02
	1	" " " " for labor	420	
		" invoice (4 brls. c. meal) p'r Hensley	15	82
May	25	" do. (62 s'cks corn) p'r Hensley	165	21
June	1	" insurance, $20.000=3%	600	
	8	" cash s. dr'ft, Martine	15	50
	10	" " " Sallie V	26	15
	12	" " " J. W. Bryant	275	
	14	" invoice (fire brick, pork, & corn meal) p'r Sallie V	162	79
	19	" do. (50 s'cks corn) p'r Hensley	84	88
	27	" do. (4 b'r'ls c. meal) p'r Sallie V	15	82
	25	" bill Vizard & W. (lime)	49	
	15	" " Gleason (bedding)	48	60
	"	" p. accept'ce, J. Clark, Sept. 25	1,026	66
		" do. " Dec. 23	1,046	66
		" commissions accepting 2½%	51	83
	28	" p. accept'ce D. & J. D. Edwards, July 28	2,000	00
		" commissions accept'g 2½%	50	
	19	" p. accept'ce Samuels & Knoop, July 16	307	71
	"	" do. Kuppin & Kull, July 17	43	79
July	1	" cash s. dr'ft, A. Whitmore	192	50
		" " " E. Hensley	46	91
		" " " B. Johnson	14	50
	5	" " for labor	433	50
		" " " extra labor	35	"
	2	" invoice (4 b'r'l' c. meal) p'r Sallie V	15	21
	9	" do. (50 s'cks corn, 4 b'r'l c. meal) p'r Hensley	103	41
	"	" do. (4 b'r'l' mess pork) p'r Hensley	55	91
	13	" Stauffer, Kent & Co., bill	35	60
	25	" cash s. dr'ft, H. Seitle	97	05
	5	" " p'd A. Hero, jr	75	
	"	" " " J. W. Bryant	187	50
	16	" " s. dr'ft Wm. Armstrong	140	"
	2	" " do. for labor	490	"
	"	" invoice (4 b'r'l' c. meal, 1 doz. axes & helves) p'r Walloon	33	40
	10	" do. (1 s'ck salt) do.	2	30
		Amount carried forward	$12,285	97

274

		Amount bro't forward	$12,285	97
Aug.		13. To invoice (4 brl. c. meal & mess pork) pr. B. Johnson	56	77
	7.	To cash C. F. Thebault (s'g't dr'ft)	70	
	6.	" do., s. dr'ft, S. B. Martine	13	35
	19.	" am't of note surrendered this day	4 000	
	20.	" cash, s. dr'ft, Sallie V	122	46
	30.	" " " labor	530	
	"	" " " P. Brooks	75	
	29.	" p. accept'ce John Clark Jan'y 15	450	
		comm's, 2½%	11	25
		" p. accept'ce D. & J. D. Edwards, Dec. 27	2,000	
		" commiss'ns, 2½%	50	
	30.	" cash paid hauling pumping-engine	12	
	31.	" " " dr'ft Samuels & Knoop, Sep. 13	224	71
		" invoice (coal, salt, meal, nails, cement, & sand)	56	52

Sept.	11.	To invoice (4 brl. pork, 5 of meal) per B. Johnson	75 84
	6.	" cash, s. dr'ft, st'r E. Hensley	140 "
	7.	" " paid for 5 pairs blankets	10 25
	9.	" " " " mattresses	38 21
	12.	" " s. dr'ft for labor	158 50
	18.	" " p'd after Aug. 29th, $258.13	52 36
	23.	" " s'g't dr'ft labor	37 65
	24.	" invoice (5 brl. corn meal) pr. Hensley	14 82
	27.	" cash 4 sck. charcoal	2 60
Aug.	30.	" p. accept'ce Kendig & Co. & int. Dec. 1	2,213 11
Sept.	30.	" cash s. dr'ft Cephas Westerbraux	149 34
Aug.	30.	" commiss'ns accepting $2,213.11, 2½%	55 32
Oct.	1.	" bill Stauffer, Kent & Co., Aug. 30	9 50
		" " do. Sept. 14	5 50
		" " do. " 9	13 85
		" " do. " 27	11 35
		" " G. W. Sizer, " 18	6 50
	3.	" cash, labor	470 10
		" " s. dr'ft, M. Nelson	19 90
		" " " P. Brooks	70 "
	7.	" " " 5th cash	90 "
	8.	" p. accept'ce Leonard & Warvell, Dec. 10	2,310 "
		" interest do.	32 85
	9.	" invoice (5 brl. meal) per Hensley	15 82
	14.	" cash, s. dr'ft bearer	26 10
	15.	" " " H. Mahoney	180 "
	8.	" bill C. M. Soria	138 50
	16.	" " do.	7 50
		" " " do.	33 90
	14.	" invoice (½ brl. sulphur, 8 brl. lime, 1 y'd wire seive) pr. Belle Ida	
	17.	" bill Stauffer, Kent & Co	75
	18.	" " C. Duhamel	14 "
		" cash, s. dr'ft Tho. Lee, caulking	36 50
	21.	" " " bearer	26 15
		" " " do.	99
		Amount carried forward	$26,610 37
275		Am't bro't forward	$26,610 37
	Oct. 24.	To cash, s. dr'ft Wm. Armstrong	36 85
	23.	To cash (50 molasses brls.) per Hensley	87 35
Nov.	2.	" do. (5 brls. c. meal) pr. Hensley	15 82
		" cash, s. dr'ft Ja. Caulfield	35 "
		" " for labor	982 75
		" "	302 62
	4.	" "	46 65
	6.	" invoice (plantation supplies)	84 88
	9.	" do. (do.)	53 85
	11.	" balance of interest acc't	158 55
			$28,414 69

CR.

1872.			
June	1.	By proc'ds note $4,005, Aug. 19	3,907 78
Aug.	27.	" " " 5,000, Dec. 30	4,712 50
Oct.	1.	" " " 5,000, January 2nd	4,765
Nov.	1.	" " " 2,500, " 2nd	2,431 10
	5.	" " hhds. sugar & 37 brl. molasses	882 87
		Balance of account	11,715 44
			$28,414 69

1872.
Nov. 11. To balance bro't down to debit $11,715 44

E. & O. E.

ERNEST & CO.,
Pr. BECK.

NEW ORLEANS, *Nov. 11th*, 1872.

276 No. 2.

Cedar Grove Planta. in acc't current and interest to Jan'y 21st, 1873, with Ernest & Co.

1872.				
Nov.	11.	To balance p'r ⅜ current	$11,715	44
		" comm's advancing $15,111.07, @ 2½ %	377	77
	14.	" insurance on $10,000 to Feb'y 14, '73	150	"
	9.	" accept'ce dftr' Crippin & Knee, Dec. 2	379	55
	21.	" invoice (plant'n supplies)	38	59
	25.	" cash paid, freight, Hunter	18	05
	27.	" p. accept'ce dftr' Samuels & Keep, Dec. 20	383	49
Dec.	2.	" cash paid s. draft for labor	1,232	"
		" " " " Jno. Samuel	15	15
Nov.	29.	" invoice (plantation supplies)	84	78
Dec.	3.	" do. do.	64	33
	4.	" p. accept'ce dftr' J. Dreyfus, Dec. 23	136	29
	10.	" cash paid, s. drf't, Jno. Hezog	100	
		" " " J. C. Jones	144	44
		" " " Mike, "fireman"	77	80
		" " " Jno. Jolls	84	
	11.	" " " C. Fehrenback	51	90
	13.	" " " Lewis Kremen	10	
	24.	" " " John Grass	50	
	28.	" " " Stauffer, Kent & Co., bills, Oct	91	02
	31.	" invoice (plantation supplies)	161	93
1873.				
Jan'y	7.	" cash for labor	676	
	15.	" " paid int. on accept'ce Jno. Clarke, $450	19	30
		" " " P. Brooks, ⅜ dr'ft $400	10	"
	20.	" " " John Grass, on ⅜	187	50
	3.	" invoice (plantation supplies)	17	87
Dec.	20.	" cash p id P. Brooks, ⅜ dr'ft, $400	50	
Jan'y	21.	" balance of interest ⅜	143	48
			$16,476	68

CR.

1872.				
Nov'r	21.	By proceeds 5 hhds., 35 bbl'	$1,110	86
	25.	" " 8 "	831	14
	30.	" " 9 "	160	18
	"	" " 9 "	974	47
	3.	" " 10 "	208	49
	7.	" " 12 "	968	51
	15.	" " 24 " 20 "	2,435	72
	26.	" " 4 " 12 "	598	27
1873.				
January	4.	" " 20 "	1,560	66
	5.	" " 24 "	470	74
	7.	" " 9 "	707	72
	"	" " 5 "	106	37
		Balance	6,343	55
			$16,476	68

277 Jan'y 21. To bal. $6,343 55
E. & O. E.

ERNEST & CO.,
P'r BECK.

NEW ORLEANS, *Jan'y 21st*, 1872.

Cedar Grove Plantation, in acc't with Ernest & Co., Dr.

1872.				
Jan'y	21.	To balance, p'r acc't	6,343	55
		" note due Dec. 30th, 1872	5,000	"
		" " " Jan'y 2d, 1873	5,000	"
		" " " " " "	2,500	"
		" back interest on above notes	55	"
			$18,898	55

CR.

1873.			
Jan'y	21.	By bal. from Mrs. Stackhouse	14,129 41
Feb'y	6.	" proceeds	
		Feb'y 9th, 1874, given to close and secure balance in fuel to this date	$4,769 14
			$18,898 55

E. & O. E.

ERNEST & CO.,
P'r BECK.

NEW ORLEANS, *Feb'y 6th*, 1873.

278 No. 3.

Cedar Grove plant'n, Dr., in acc't with Ernest & Co. Interest to and including Sept. 18th, 1873.

1873.			
Feb'y	6.	To invoice (plantation supplies)	66 02
	7.	" Beck, notary, for mortgage act	15 "
	"	" Cash s. drf't labor	496 "
	13.	" balance " Jno. Grass for $375	137 50
	8.	" part accept'ce Crippin & Lee, due Apr'l 12	306 28
		" commission	7 65
	12.	" invoice (plantation supplies)	69 09
	15.	" cash s. dr'ft str. Empire	25 45
	20.	" " bill T. Simms & Levy	1 60
		" invoice (plantation supplies)	13 05
	21.	" do. (do.)	78 70
	24.	" p. accept'ce Sierverds & Kip, Sep. 4	418 30
		" commission accepting same	10 46
	26.	" cash s. dr'ft, C. V. Thibaut	164 09
	27.	" invoice (plantation supplies)	10 89
March	8.	" cash, J. W. Bryant	300 "
	14.	" invoice (plantation supplies)	97 15
April	29.	" do. (do.)	9 55
April	1.	" do. (do.)	131 27
	4.	" do. (do.)	11 25
	12.	" do. (do.)	44 86
	25.	" do. (do.)	8 74
May	10.	" cash, Mrs. S. F. Stackhouse	100 "
	3.	" invoice (plantation supplies)	148 65
	12.	" do. (do.)	56 01
	27.	" do. (do.)	52 81
June	6.	" do. (do.)	90 23
	13.	" do. (do.)	45 11
	20.	" do. (do.)	9 65
July	2.	" cash p'd Hensley	125 "
	12.	" fire ins'ce, " Delta Co."	600 "
	1.	" invoice (plantation supplies)	101 96
	4.	" do. (do.)	89 82
	15.	" do. (do.)	18 40
	25.	" cash, J. W. Bryant	45 "
	26.	" invoice (plantation supplies)	5 48
Aug.	1.	" ins'ce, $5,000, rice, &c., &c.	150 "
July	26.	" invoice (plantation supplies)	42 76
Aug.	2.	" do. (do.)	62 58
	5.	" do. (do.)	145 94
	12.	" do. (do.)	108 68
	8.	" cash J. W. Bryant	225 "
	22.	" invoice (plantation supplies)	59 22
	30.	" do. (do.)	22 15
	23.	" cash. J. W. Bryant	600 "
Sept.	9.	" " do.	498 "
		Amount carried forward	$5,845 35

279 Amount bro't forward $5,845 35

1873.			
Sept. 6.	To invoice (plantation supplies)		38 54
12.	" do. (do.)		150 20
	" bal. of interest to D'r		129 64
			$6,163 73
1872.	Cr.		
Sept. 10.	By pr'c'd 389 s'cks rice		1,880 39
	Balance to D'r		4,283 34
			$6,163 73
1873.			
Sept. 18.	To balance bro't down to debit		$4,283 34

E. & O. E.

ERNEST & CO.,
P'r BECK.

New Orleans, *Sept.* 18*th*, 1873.

280 No. 4.

Cedar Grove Plant'n, in account with Ernest & Co., Dr. Int. to 15 *Feb'y*, 1874, @ 8%.

1873.				
Sept. 18.	To bal., pr. acc't	$483 34		
	" commis. 2½ % for endorsing note, $5,438	135 95		
	" " " " cash advanced, $4,283.34	107 08	$4,526 37	
Oct. 11.	" invoice (plantation supplies)			25 85
Nov. 3.	" currency remitted, per "Josephine"	48 "		
	" 3½ % prem. paid for same	1 68		49 68
	" invoice (plantation supplies)			50 15
20.	" currency, $30 remitted, 2%—60 prem			30 60
	" invoice (plantation supplies)			51 13
	" do. (do.)			102 77
Dec. 18.	" currency for Mrs. Stackhouse			200 "
	" prem. paid for same			75
19.	" paid V. Thibaut			5 "
1874.				
Jan'y 10.	" invoice (plantation supplies)			24 30
Feb'y 16.	" bal. int. to yr. debit			142 49
				$5,209 09
	Cr.			
1873.				
Dec. 15.	" By proc'd 20 b'r'ls mol's			$266 58
20.	" " 32 " "			360 31
1874.				
Jan'y 13.	" " 152 b'r'ls & 6 s'cks rice			1,270 50
	Bal. to yr. debit			3,311 70
				$5,209 09
				$
1874.				
Feb'y 16.	To balance to yr. debit, bro't down			$3,311 70

(Note, $5,438.00, due Feb'y 6-9, '74.
E. & O. E.

ERNEST & CO.,
P'r BECK.

New Orleans, *Feb'y* 16*th*, 1874.

RECAPITULATION.

Bal. to debit Cedar Grove	$3,311 70
" " " Mrs. S. F. Stackhouse	835 74
Note due Feb'y 6-9, '74	5,438 "
Total indebtedness, Feb'y 16.	

(Endorsed:) No. 8116. U. S. C. C. Sawyer vs. Montgomery. A A. Filed before me this 20th April, 1878. (Signed) Francis B. Lee, special examiner.

Filed May 23d, 1878.
(Signed) F. B. VINOT,
D'y Clerk.

281 *Draft marked Exhibit C C.*

$684 $\frac{70}{100}$. CEDAR GROVE, *Feb'ry* 28, 1873.

Please pay to the order of labor six hundred and eighty-four $\frac{70}{100}$ dollars, value received, and charge the same to account of plantation.
(Signed) S. F. STACKHOUSE.

To Messrs. ERNEST & Co.,
New Orleans, La.

(Endorsed:) C C. Filed before me this 20th April, 1878. Francis B. Lee, special examiner. No. 8116. U. S. circuit court. Filed May 23d, 1878. F. B. Vinot, d'y cl'k.

Judgment 5th district court and certificate of recordation.

THE STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

I hereby certify that on the 20th day of February, 1872, judgment was obtained in this court in the following entitled suit, in the words and figures following:

W. & H. STACKHOUSE
versus } No. 18850.
JAMES E. ZUNTZ.

282 In this case, for the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged, and decreed that there be judgment in favor of defendant; that the injunction herein be dismissed with costs, and that the said defendant, James E. Zuntz, do have and recover of plaintiffs, William and Heywood Stackhouse and their surety on the injunction bond, in solido, twenty per cent. damages on the amount of the judgment herein enjoined, together with eight per cent. interest, as allowed on the order of seizure and sale.

It is further ordered that the claim for attorneys' fees herein be dismissed.

Judgment rendered February 20, 1872.
" signed March 5, 1872.
(Signed) CHARLES LEAUMONT, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, on this 6th day of April, in the year of our Lord one thousand eight hundred and seventy-two, and the 96th year of the Independence of the United States.
(Signed) PHILIP POWER, JR.,
D'y Clerk.

283 Recorded, parish of Plaquemines, at the request of Thos. B. Lee, this 17th day of April, A. D. 1872.

(Signed) C. V. THIBAUT,
Recorder.

STATE OF LOUISIANA,
Recorder's Office, Parish of Plaquemines:

I, the undersigned recorder in and for the parish of Plaquemines, do hereby certify that the above and foregoing is a true and correct copy from the records of my office, Book A of judicial mortgages, fo. 245, No. 438.

In faith whereof I have hereunto signed my name and affixed the seal of my office, at Pointe à la Hache, parish of Plaquemines, this 14th day of February, 1877.

[L. S.] (Signed) A. E. LIVAUDAIS,
Recorder.

Rule XIII of supreme court.

RULE XIII.

Whenever, pending an appeal, either party shall die, his proper representatives may voluntarily come in and be admitted parties to the suit; and thereupon the cause shall be heard and determined as
284 in other cases. When the appellant dies pending the appeal, if his proper representatives be known and reside within the State, and have not made themselves parties to the case, the appellee may, on affidavit, apply for an order to summon them to appear within twenty-five days; and, in default of such appearance after due return of service, the appellee may move the dismissal of the appeal, or have the cause heard and determined as in other cases.

If the proper representatives of the appellant be not known, or do not reside within the State, the appellee may, on affidavit, obtain an order that unless they appear and become parties within three months from publication, the appeal may be dismissed, and cause the said order to be *dismissed, and cause the said order to be* published three times in a newspaper printed at the seat of government of the State, or in the place where the court sits; and upon proof of such publication, and default of appearance, the appellee may have the appeal dismissed, or the cause heard and determined as in other cases.

If the appellee dies pending the appeal, and his proper repre-
285 sentatives be known and reside within the State, and have not made themselves parties to the cause, the appellant may, on affidavit, apply for an order to summon them to appear within twenty-five days; and, in default of such appearance, after due return of service, the appellant may proceed to have the cause heard and determined as in other cases.

If the appellee's proper representatives be not known or do not reside in the State, the appellant may on affidavit obtain an order that unless they appear and become parties within three months from publication, the appellant will proceed to have the cause heard and determined, and cause the said order to be published three times in a newspaper printed at the seat of government of the State or in the place where the court sits, and upon proof of such publication, and in default of appearance, the appellant may proceed to have the cause heard and determined as in other cases.

In country cases the time of personal summon may be reduced on special application according to circumstances.

286 (Endorsed:) No. 8116. U. S. circuit court. Silas W. Sawyer vs. Richard Montgomery et als. Filed before me 20th April, 1878. Francis B. Lee, special examiner.

Testimony taken before Special Examiner Francis B. Lee.

U. S. circuit.

SILAS W. SAWYER *vs.* R. R. MONTGOMERY ET ALS. } No. 8116.

Testimony in above suit taken before Francis B. Lee, special examiner, under an order of court of date .

Testimony on behalf of respondents.

Respondents introduce in evidence:

1. Pleadings in suit for executory process in case of Jas. E. Zuntz, W. & H. Stackhouse, in the district court for the parish of Plaquemines, and subsequently removed to the 5th district court for the parish of Orleans, and No. 18719 of the docket.

2. Pleadings in the case of W. and H. Stackhouse vs. Jas. E. Zuntz, for injunction against executory proceedings in district court for the parish of Plaquemines, and subsequently removed to the 5th district court for the parish of Orleans, and No. 18850 of the docket of
287 said 5th district court.

3d. Judgment of the 5th district court dissolving the injunction with damages.

4°. Motion for appeal and order thereon.

5°. The pleadings in the case removed by appeal to the supreme court of the State, and No. 2020 of the docket thereof.

6°. Judgment and decree of the supreme court annulling and reversing the decree of the 5th district court and decree remanding the case of W. & H. Stackhouse vs. Jas. E. Zuntz to 5th district court to be tried de novo.

7. Pleadings in case of W. and H. Stackhouse vs. Jas. E. Zuntz in 5th district court under decree of supreme court remanding the cause, and No. 18850 of the docket of the 5th district court.

8. Judgment of the 5th district court under decree remanding the same by the supreme court dissolving the injunction in case of W. and H. Stackhouse vs. Jas. E. Zuntz, with damages.

9. Pleadings in record of W. & H. Stackhouse vs. Jas. E. Zuntz in the supreme court, and No. 4019 of the docket thereof.

10. Decree of supreme court affirming the judgment of the 5th
288 district court for the parish of Orleans, in case of W. & H. Stackhouse vs. Jas. E. Zuntz (all of which appear in record No. 4019 of the docket of the supreme court offered in evidence).

11. Certificate of the recorder of the parish of Plaquemines showing the recordation of mortgage in favor of Ernst & Co., and the date thereof, as per document marked M N, filed herewith.

12. Sheriff's proces-verbal and adjudication to Sawyer.

13. Act of partition between William Stackhouse and Mrs. Sarah F.

Brooks, wife of Heywood Stackhouse, in her own right as widow in community, and as natural tutrix of her minor children Herbert, Mabel, Maud, and Blanche, and as attorney in fact of Mrs. L. A. Bryant, by which act she acquired the whole of Cedar Grove plantation, and the subsequent proceedings showing the approval of the family meeting and homologation by this court.

14. Record in case of Leng & Ogden and R. R. Montgomery, U. S. circuit court, and No. 8028 of the docket in equity proceedings to foreclose mortgage by executory proceedings.

289 15. Act of mortgage from Mrs. Stackhouse to Ernst & Co., and all the exhibits referred to in said act and made part thereof.

16. Certificate of the recorder of Plaquemines Parish, marked X, showing the judgment recorded by Jas. E. Zuntz, and under which Sawyer claims title.

It is admitted that Wm. & Heywood Stackhouse owned the Cedar Grove plantation, as coproprietors, from date of its purchase by them down to death of Heywood Stackhouse, in the year 1869.

It is admitted that at the death of Heywood Stackhouse he left four minor heirs and no others, Herbert, Mabel, Maud, and Blanche, and Mrs. L. A. Bryant, then married, and that Mrs. Sarah F. Brooks, his wife and widow, in community, was properly qualified as natural tutrix, and administering as such, as per document marked J. K., filed herewith.

Complainant offers in evidence Document A B.

FREDERICK ERNEST, being sworn and examined on behalf of respondents, says:

290 Mrs. S. F. Stackhouse, wife of Heywood Stackhouse, was exclusively in possession of Cedar Grove plantation from May, 1872, to March, 1874, and was working and cultivating the same for her use and benefit, and that of the minors Stackhouse and Mrs. Bryant. The above facts I know, because I had charge of this business as their merchant in town, and because I visited the place personally late in 1873, and also from conversation and intercourse in relation to her affairs between myself and Mrs. Stackhouse. I was a member of the firm of Ernst & Co., which firm furnished supplies to Cedar Grove plantation from May 7th, 1872, to February 16th, 1874, and which supplies were so furnished for the benefit of Cedar Grove plantation and for the purpose of working and cultivating the same.

There were three mortgage notes given by S. F. Stackhouse in her own right and as tutrix, and by Bryant to Ernst & Co., all of which were payable Feb'y 6, '74, and each for the following sums respectively:

291 One for $5,438, one for $5,000, and one for $4,562, making in the aggregate $15,000. Ernst & Co. hold one for $5,438, and the other two are held and owned by Leng and Ogden and R. R. Montgomery, and my firm are ready and willing to deliver up the note now held by them under the mortgage, because it has been paid.

Silas W. Sawyer holds title to property under proceedings had under suit No. 2270 of the district court of Plaquemines in case of Zuntz vs. Stackhouse.

Leng and Ogden are the holders and owners on the note sued on by them in the case of Montgomery et als. vs Sawyer, U. S. circuit court, before maturity and for value.

R. R. Montgomery is the holder of the note sued on by him in the case of Montgomery et als. vs. Sawyer, U. S. circuit court, for value after maturity.

If Mrs. Stackhouse had not paid or secured the balance due Feb'y 6th,

1873, the time the mortgage was given, which was for supplies furnished Cedar Grove plantation, we would have sued her for the amount or balance due us.

Respondent offers documents marked A 1, B 1, C 1.

292 (Complainant objects on the ground that said documents purport to be transcript from the books of Ernst & Co., showing their dealings and transactions with Mrs. Stackhouse and the succession of Haywood Stackhouse—documents A A and B B having been offered by complainant, which documents show the same transactions between Ernst & Co. and the Stackhouses during the same period, and on further ground that no testimony can now be introduced to vary or contradict the evidence of this witness given already in this case at a previous sitting.)

Documents A 1, B 1, C 1 contain the same items as documents A A and B B, only the arrangement of the two series of accounts is different.

In accounts A 1, B 1, and C 1 the total amount of supplies is stated in one column from Feb'y 6th, '73, to Feb'y 16th, '74, and the other items of the account, not supplies, are in another column. In A A and B B the mode of stating account is different; the results reached in both are identical.

293 Accounts A 1, B 1, and C 1 were compiled from A A and B B, and result arrived at in both series of accounts is precisely the same.

From Feb'ry 6th, 1873, to Feb'ry 16th, 1874, I furnished to Cedar Grove plantation and Mrs. Stackhouse supplies to the amount of $10,282.59. If this statement of amount varies from any previous one given by me, it is because I then spoke from memory, and now I speak positively from figures before me, and from inspection of accounts made up by myself.

No instructions were ever given by Mrs. Stackhouse, or by any one on her behalf, to place the proceeds of shipments or collections to the payment of any particular indebtedness.

The total collections made for the account of Mrs. Stackhouse, outside of sales of produce and machinery, was $10,818.13, which went to pay two notes of William Stackhouse, amounting to $11,000, which notes were discounted by Ernst & Co. for Mrs. Stackhouse, and proceeds placed to her credit, and which notes were not paid at maturity by William Stackhouse.

294 (Complainant objects to this last paragraph of testimony as not pertinent to the issues in this case.)

The sales of produce for account of Cedar Grove plantation amounted to $3,777.78, and steam train amounting to $2,675.17, making a total of $6,452.95. This amount was used by Ernst & Co. to pay, 1st, a balance due on note of William Stackhouse of $181.87; 2d, mortgage-note due Feb'y 6, –'9, for 5,438, and commission for negotiating the same $135.95, making a total paid of $5,755.82. The remaining balance, $697.13, was credited towards payment of supply account, which amounted to $10,282.57, leaving a balance due of $9,585.44, which balance is due as per account rendered. There is now due, according to accounts, "A 1," "B 1," and "C 1," $9,585.44 for supplies.

Cross-examination by counsel for complainant:

The amount of $10,818.13 was collected during the year 1873. This amount was composed of payments made by Wm. Stackhouse on account of his own notes which had passed maturity, and had been

295 credited to Mrs. Stackhouse, and which, when matured, were charged back to her, and held by Ernst & Co. as bills receivable,

endorsed by Mrs. S. F. Stackhouse. The amount realized by my firm in 1873 and '4, from sales of crops and machinery on Cedar Grove plantation was $6,452.95, the whole of which was credited to extinguish the mortgage-note of $5,438, and the balance went to the extinguishment pro tanto of the supply account, thus reducing the supply indebtedness to $9,585.44, for which balance the two remaining mortgage-notes are held as security.

The proceeds of the sale of the crops raised on Cedar Grove plantation during year 1873 & '4, along with proceeds of sale of machinery, was appropriated to the payment of an indebtedness due to my firm at the time of the giving of the notes secured by mortgage, which indebtedness was for supplies already advanced to Cedar Grove plantation, and represented by the note of $5,438.00, part of mortgage of $15,000.

U. S. circuit court.

296 SILAS W. SAWYER *vs.* R. R. MONGOMERY ET AL. } No. 8116.

This is to certify that I, Francis B. Lee, appointed by order of the United States circuit court, of date 21 March, 1878, special examiner in above case, did, at the solicitation of respondents herein, cause to appear before me Frederick Ernest, of this city, who being duly sworn by me, as such special examiner, to give full, true, and correct answers to the questions to be propounded to him, and in that regard to tell the truth, the whole truth, and nothing but the truth, did, in my presence, in answer to interrogatories orally propounded, and by counsel for respondent, testified in substance as contained in the foregoing pages, which answers were taken down in my presence and that of the witnesses and opposing counsel; that the documents introduced in evidence, and not referred to in nor connected with the testimony of the witnesses are stated and set forth in the note of evidence which is attached hereto.

Thus done and passed at my office, No. 29 Carondelet st., in the city of New Orleans, on the 30th day of May, 1878.

(Signed) FRANCIS B. LEE,
Special Examiner.

297 No. 1.

Mrs. S. F. Stackhouse in acc't current and interest @ Nov. 11, *with Ernest & Co.*

1872.			
May	31.	To cash paid dr'ft H. J. Crippin	$128 14
June	14.	" " " " for self	120 00
	19.	" p. accept'ce " Krippen & Knee, July 14	169 02
July	25.	" cash paid part dr'ft $129.05, H. Scille	30 00
Aug.	1.	" p. accept'ce dr'ft Crippin & Knee, Sep. 3	165 11
	20.	" cash paid J. W. Bryant	20 00
Sept.	7.	" " " s. dr'ft J. P. Warner	26 00
	18.	" " " part, Aug'st 29th, $258.13	205 77
	20.	" " " s. dr'ft Mrs. G. H. Caldwell	30 00
Oct.	14.	" " " do.	30 00
Nov.	11.	" comm'ns, advanc'g $612.27, @ 2½ % @ Aug. 1st	15 30
		Balance	4,337 53
			$5,276 86

CR.

1872.			
Aug. 19.	By proceeds W. Stackhouse's note, $5,000 & int		$5,200 00
	Balance of interest		76 87
			$5,276 87

CR.

1872.			
Nov. 11.	By balance acc't credit	$4,337 53	
E. & O. E.			

ERNEST & CO.,
P'r BECK.

NEW ORLEANS, *Nov.* 11th, 1872.

No. 2.

Mrs. S. F. Stackhouse in acc't current and interest ac't to Jan'y 21, 1873, *with Ernest & Co.*

1872.			
Nov. 12.	To cash paid s. dr'ft Mrs. G. H. Caldwell		$30 00
9.	"		379 25
Dec. 20.	"		44 40
1873.			
Jan'y 13.	" cash paid J. W. Bryant		100 00
	Balance		9,063 26
			$9,616 91

CR.

1872.			
Nov. 11.	By balance p'r acc't curr't		$4,337 53
1873.			
Jan'y 11.	" pro'ds note $5,000, & int. Feb. 19, W. Stackhouse		5,205 00
21.	" bal. of interest ⅜c		74 38
			$9,616 91

1873.			
Jan'y 21.	By balance of acc't cr	$9,063 26	
	" pro'ds note $5,000, & int. Aug. 19, W. Stackhouse	5,066 15	
	Transferred to credit Cedar Grove		$14,129 41

E & O. E.

ERNEST & CO.,
P'r BECK.

NEW ORLEANS, *Jan'y* 21st, 1873.

298

No. 3.

Mrs. S. F. Stackhouse in acc't with Ernest & Co., interest to and including Sept. 18, '73.

1873.			
Feb. 6.	To cash to J. W. Bryant		30
	" p. accept'e D. & J. D. Edwards, Dec. 27		1,601 36
	" commissions on same, 2½%		40 03
8.	" part p. accept'ce of Crippen & Knee, April 12		316 13
	" commissions on same, 2½%		7 90
17.	" cash, bill Stauffer, Kent & Co		9 25
19.	" note of W. F. Stackhouse & int		5,400
	" Bayne & Eustis ⅜, 1,000		648 14
	" freight p'r "Hunter"		11 75
Aug. 19.	" note of W. F. Stackhouse, $5,000; int. $600		5,600
	" bal. int. to y'r D		230 73
			$13,895 29

CR.

1873.				
Feb'y 19.	By cash from W. Stackhouse, 3% t 2d note		$3,500	
May 19.	" ch'k of H. F. Given & Co.,	do	500	
June 24.	" cash from W. Stackhouse,	do	250	
26.	" " ch'k H. F. Given & Co.,	do	250	
Aug. 2.	" " bal'ce on 2d note $5,000, W. F Stackhouse		607	37
	" bal. to y'r debit		8,787	92
			$13,895	29
1873.				
Sept. 18.	To bal. to y'r debit brought down		$8,787	92

E. & O. E.

ERNEST & CO.,
P'r BECK.

NEW ORLEANS, *Sept. 18th*, 1873.

No. 4.

Mrs. S. F. Stackhouse in acc't current with Ernest & Co., Dr. Int. to 16th Feb'y, 1874, @ 8%.

1873.				
Sept. 18.	To bal. p'r acc't rend	$8,787 92		
	" comm's 2½% for advancing same cash	219 70	$9,007	62
Dec. 27.	" cash to renew 3% fav. D. & J. D. Edwards, $1,000.		26	
1874.				
Jan'y 29.	" do do " do $800...		26	77
Feb'y 16.	" int. bal. to y'r debit		161	28
			$9,221	67

CR.

1873.			
Nov. 14.	By W. Stackhouse's note, $5,600 & interest to date	5,710	76
1874.			
Jan'y 9.	" cash rec'd of S. W. Sawyer	500	
10.	" pr'c'ds S. W. Sawyer's note, $2,500, 312 days, disc'd	2,175	17
Feb'y 16.	" bal. to y'r debit	835	74
		$9,221	67
1874.			
Feb'y 16.	To bal. to y'r dr. bro't down	$835	74

E. & O. E.

ERNEST & CO.
P'r BECK.

NEW ORLEANS, *Feb'y 16th*, 1874.

(Endorsed:) No. 8116. U. S. C. C. Sawyer vs. Montgomery. B B. Filed before me this 20th day of April, 1878. Francis B. Lee, special examiner.

Filed May 23d, 1878.

F. B. VINOT,
D'y Clerk.

299 *Statement of supplies furnished & payments made for acc't Cedar Grove plantation by Ernest & Co., from Feb'y 6th, 1873, to Feb'y 16th, 1874.*

		Supplies.	Other items.
1873.			
Feb'y 6.	To invoice plant'n supplies	86 02	
7.	" Beck, notary, for ac't mort'ge	15	
	" d'f't for funds for labor	496	
13.	" " Jno. Grass, bal., (375)	137 50	
8.	" " Crippen & Knee, due Ap'l 12	306 28	
	" Comm. acc'g	7 65	
12.	" invoice plant'n supplies	69 09	

	15.	To d'f't str. Empire	25 45	
	20.	" bill Simms & Levy	1 60	
		" invoice plant'n supplies	13 05	
	21.	" " do.	78 70	
		" d'f't Samuels & Knoop, due Sept. 4	418 30	
		" comm. accep'g	10 46	
	26.	" d'f't C. V. Tebaut	164 09	
	27.	" invoice plant'n supplies	10 89	
M'ch	8.	" p'd J. W. Bryant for labor	300	
	14.	" invoice plant'n supplies	97 15	
	29.	" " " "	9 55	
Ap'l	1.	" " " "	131 27	
	4.	" " " "	11 25	
	12.	" " " "	44 86	
	25.	" " " "	8 74	
May	10.	" p'd Mrs. S. F. Stackhouse	100	
	3.	" invoice plant'n supplies	148 65	
	12.	" " " "	56 01	
	27.	" " " "	52 81	
June	6.	" " " "	90 23	
	13.	" " " "	45 11	
	20.	" " " "	9 65	
July	2.	" p'd st'r Hensley	125	
	12.	" ins. on sugar-house, &c	600	
	1.	" invoice plant'n supplies	101 96	
	4.	" " " "	89 82	
	15.	" " " "	18 40	
	25.	" p'd J. W. Bryant for labor	45	
	26.	" invoice plant'n supplies	5 48	
Aug.	1.	" ins. 5,000 on rice, &c	150	
July	26.	" invoice plant'n supplies	42 76	
Aug.	2.	" " " "	62 58	
	5.	" " " "	145 94	
	12.	" " " "	108 68	
	8.	" p'd J. W. Bryant for labor	225	
	22.	" invoice plant'n supplies	59 22	
	30.	" " " "	22 15	
	23.	" p'd J. W. Bryant for labor	600	
Sept.	9.	" " do do	498	
	6.	" invoice plant'n supplies	38 54	
	12.	" " " "	150 20	
		" interest to date	129 64	
	18.	" comm. advance to date	107 08	
		" " negotiat'g mortgage note		135 95
Oct.	11.	" invoice plant'n supplies	25 85	
Nov.	3.	" remitt'd for labor, 48 pri'm, 1.68	49 68	
		" invoice plant'n supplies	50 15	
	20.	" remitted for labor, 30 pri'm, 60	30 60	
	20.	" invoice plant'n supplies	51 13	
	22.	" " " "	102 77	
Dec.	18.	" remitted for labor, 200 pri'm, 75	200 75	
	19.	" V. Tebaut, recorder	5	
1874.				
Jan'y	10.	" invoice plant'n supplies	24 30	
Feb'y	16.	" bal. of interest	142 49	
		Total supplies & cas.	6,953 53	135 95
		Other items	135 95	
			7,089 48	
		Note due Feb'y 6-9, '74	5,438	
			12,527 48	

Supplies furnished Cedar Grove	6,953 53	
" " Mrs. S. F. Stackhouse	3,329 04	
Total	$10,282 57	

(Endorsed:) Accounts between Cedar Grove & Ernest & Co. A 1. Filed May 31, '78, before me, Francis B. Lee, spec. ex.

300 *Collections & sales made by Ernest & Co. for acc't of Cedar Grove Plant'n, from Feb'y 6th, 1873, to Feb'y 16th, 1874.*

1873.				
Sept.	10.	Pro. 389 s'ks rice	1,880 39	
Dec.	15.	" 20 bbs. mols	266 58	
	20.	" 32 " "	360 31	
1874.				
Jan'y	13.	" 152 bbs. & s'ks rice	1,270 50	
			$3,777 78	

Collections made by Ernest & Co. for acc't of Mrs. S. F. Stackhouse, from Feb'y 6th, 1873, to Feb'y 16th, 1874.

1873.				
Feb'y	19.	By am't of W. Stackhouse	3,500	
May	19.	" ch'k of H. F. Given	500	
June	24.	" acc't of W. Stackhouse	250	
	26.	" ch'k of H. F. Given	250	
Aug.	2.	" acc't of W. Stackhouse	607 37	
Nov.	14.	" note of W. Stackhouse & int	5,710 76	
1874.				
Jan'y	9.	" cash of S. W. Sawyer	500	
	10.	" pro. not do 2,500	2,175 17	
		Total coll'n	$13,493 30	

RECAPITULATION.

Am't of payments a/c Cedar Grove	12,527 48		
" " " " Mrs. S. F. Stackhouse	14,329 04		
		$26,856 52	
Am't of coll. a/c Cedar Grove	3,777 78		
" " " " Mrs. S. F. Stackhouse	13,493 30		
		$17,271 08	
Nett cash bal. due E. & Co		$9,585 44	

(Endorsed:) C 1. Filed, before me, May 31, '78. Francis B. Lee, spec. ex.

Statement of supplies & other items furnished for a/c of Mrs. S. F. Stackhouse by Ernest & Co. from Feb'y 6th, 1873, to Feb'y 16th, 1874.

			Supplies.	Other items.
1873.				
Feb'y	6.	To p'd J. W. Bryant	30	
		" dr'ft D. & J. D. Edwards, Dec. 27	1,601 36	
		" comm. acc't	40 03	
	8.	" p'd d'f't Crippen & Knee, Ap'l 12	316 13	
		" comm. acc. g	7 90	
	19.	" bill Stauffer, Kent & Co	9 25	
		" note W. F. Stackhouse & int		5,400
		" a/c Bayne & Eustis	648 14	
		" freight, p'r Hunter	11 75	
Aug.	19.	" note W. F. Stackhouse & int		5,600
		" balance of int	230 73	
Sept.	18.	" comm'n for adv'g	119 70	
Dec.	27.	" D. & J. D. Edwards	26	
Feb'y	16.	" " "	26 77	
Feb'y	16.	" bal. of int	161 28	
		Supplies advanced	3,329 04	11,000
		Other items	11,000	
			$14,329 04	

(Endorsed:) B 1. Filed May 31st, '78, before me. Francis B. Lee, spec. ex.

301 *Document marked M N.—Filed before Special Examiner Francis B. Lee, May 30th,* 1878.

No. 2169.

Mistress Sarah F. Stackhouse, tutrix, in favor of the commercial firm of Ernest & Co., as per act of mortgage executed before Algernon Sidney Beck, a notary public of the city of New Orleans, on the 6th day of February, 1873, to secure the full and punctual payment of the sum of fifteen thousand dollars ($15,000.00) in three several promissory notes drawn by the said Mrs. Sarah F. Stackhouse to the order of and endorsed by herself, dated the sixth day of February, 1873, and made payable three months after date. One of said notes for the sum of five thousand four hundred and thirty-eight dollars, with interest at the rate of eight per cent. per annum after maturity; one for the sum of five thousand dollars, and one of said notes for the sum of four thousand five hundred and sixty-two dollars, the two lastly described bearing interest from date until paid at the rate of eight per cent. per annum;
302 all of said notes payable at the counting-house of Ernest & Co., in the city of New Orleans.

Now, therefore, in order to secure the punctual payment of said notes and all interest to accrue thereon, and reimburse unto any legal holder or holders of said notes such lawyer's or attorney's fees as they may incur, and pay in the collection thereof in the event of their non-payment at maturity; provided, however, that such fees shall in no case exceed five per cent. on the amount sued upon, and all charges, costs, &c., are to be paid by said mortgagor, and the said mortgage shall be considered as covering and protecting all legal holder or holders of said promissory notes, or either of them; specially mortgaged and hypothecated in favor of said Ernest & Co., and to enure to the benefit of any and all legal holder or holders of the said three promissory notes, the following described property, to wit:

A certain tract of land situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, cultivated as a
303 sugar plantation, known as the Cedar Grove plantation now, and formerly known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four and a half arpents (34½) front on the river by forty arpents in depth, bounded above by the plantation of Octave Reggio and below by the lands of René Sarpy, with all the buildings and improvements thereon, sugar-house, machinery, agricultural implements, horses, mules, cattle, and all appurtenances thereto belonging or appertaining.

Recorded, parish of Plaquemines, this fourteenth (14th) day of February, A. D. 1873.

(Signed) C. V. THIBAUT,
Recorder.

By virtue of a certificate of release, dated March 6th, 1875, issued by Oscar B. Sarpy, sheriff of this parish, annexed to page 460 of this book, this mortgage is entirely raised, cancelled and annulled.

Parish of Plaquemines, this 8th day of March, A. D. 1875.

(Signed) C. V. THIBAUT,
Recorder.

304 PARISH OF PLAQUEMINES, *May* 21, 1878.

I, the undersigned deputy recorder in and for the parish of

Plaquemines, State of Louisiana, do hereby certify that the above and foregoing are true and correct copies of the recording of the mortgage granted by Mistress S. F. Stackhouse, tutrix, in favor of the commercial firm of Ernest & Co., as per act of mortgage passed before A. S. Beck, notary public, on the 6th day of February, 1873, and the cancellation thereof, as entered in the records of this office in mortgage-book D, folio 488.

As witness my hand and the seal of my office this 21st day of May, 1878.

[L. S.] (Signed) D. MAURY,
D'y Recorder.

Document marked M N.—Filed before Special Examiner Francis B. Lee, May 30th, 1878.

POINTE À LA HACHE, *March 6th*, 1875.

To C. V. THIBAUT, Esq.,
Recorder in and for the Parish of Plaquemines:

305 DEAR SIR: You are hereby directed to erase and cancel the mortgages existing and inscribed against New Hope plantation, in the name of Sarah F. Stackhouse, in her own right and as tutrix subsequent to April 17th, 1872, in compliance with an adjudication made by me on this 6th March, 1875, in the case of James E. Zuntz vs. Sarah F. Stackhouse, No. 2270 of the docket of the 2d jud'l dist. court for the parish of Plaquemines, so far as they affect the New Hope plantation.

(Signed) O. B. SARPY, *Sheriff.*

The undersigned, deputy recorder in and for the parish of Plaquemines, State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the certificate of release dated March 6th, 1875, referred to in the cancellation of the mortgage granted by Mrs. Sarah F. Stackhouse in favor of Ernest & Co., by act passed before A. S. Beck, notary public, on the 6th February, 1873, and annexed to page 460 of conventional mortgage book D, in this office.

Witness my hand and seal of office, at the parish of Plaquemines, State of Louisiana, this 21st day of May, 1878.

[L. S.] (Signed) D. MAURY,
D'y Recorder.

306 *Document marked X.—Filed before Special Examiner Francis B. Lee, May 30, 1878.*

THE STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

I hereby certify that on the twentieth day of February, 1872, judgment was rendered in this court in the following entitled suit in the words and figures following, to wit:

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 18850.

In this case, for the reasons assigned in the written opinion of the court, this day delivered and on file, it is ordered, adjudged and de-

creed that there be judgment in favor of defendant, that the injunction herein be dismissed with costs, and that the said defendant, James E. Zunts, do have and recover of plaintiffs, William and Heywood Stackhouse, and their surety on the injunction bond in solido, twenty per cent. damages on the amount of the judgment herein enjoined,
307 together with eight per cent. interest as allowed on the order of seizure and sale.

It is further ordered that the claim for attorneys' fees be dismissed.

Judgment rendered February 20th, 1872.

Judgment signed March 5th, 1872.

(Signed) CHARLES LEAUMONT, *Judge.*

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court at the city of New Orleans, on this sixth day of April, in the year of our Lord one thousand eight hundred and seventy-two, and the ninety-sixth year of the Independence of the United States.

(Signed) PHILIP POWER, JR.,
D'y Clerk.

Recorded parish of Plaquemines, at the request of Thos. B. Lee, this 17th day of April, 1872.

(Signed) C. V. THIBAUT, *Recorder.*

I, the undersigned, deputy recorder in and for the parish of Plaquemines, State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the judgment as recorded in
308 this office, in judicial mortgage B A, No. 438, folio 245.

As witness my hand and the seal of my office, at the parish of Plaquemines, State of Louisiana, this 21st day of May, 1878.

[L. S.] (Signed) D. MAURY,
D'y Recorder.

Document marked J. K.—Filed before Special Examiner Francis B. Lee, May 30, 1878.

To the honorable William M. Prescott, judge of the parish court of the parish of Plaquemines.

The petition of Sarah F. Brooks, widow of Haywood Stackhouse, residing in this parish, respectfully represents:

That her said husband departed this life at his late residence, Live Oak Grove plantation, in the parish of Plaquemines, on or about the 18th December, 1859, leaving as the sole offspring of his marriage with your petitioner five minor children, to wit: Lilla Stackhouse, aged about seventeen years; Herbert Stackhouse, aged about thirteen years; Blanche Stackhouse, aged about ten years; Maud Stackhouse,
309 aged about seven years; and Mabel Stackhouse, aged about four years; that your petitioner as the mother of said minors is desirous of being confirmed as their natural tutrix and of having an undertutor appointed to represent them.

Wherefore she prays the court to order that she be confirmed and qualified as natural tutrix of her said above-named minor children, and that letters of natural tutorship accordingly issue to her, and that an under tutor be appointed to represent said minors.

And she prays for all such other and further orders, proceedings, and

general relief as the nature of the case may require and the law will permit, and she will ever pray, &c., &c.

(Signed) C. ROSELIUS & ALFRED PHILIPS,
Of Counsel.

Affidavit.

Wm. H. H. Brooks, being duly sworn, deposes and says that Haywood Stackhouse, a resident of the parish of Plaquemines, departed this life in said parish, at his residence on Live Oak Grove plantation, on the 18th December, 1869.

(Signed) W. H. H. BROOKS.

310 Sworn to & subscribed before me this 29th of December, 1869.

(Signed) WILLIAM M. PRESCOTT,
Parish Judge.

Order.

Let the petitioner, Sarah F. Brooks, widow of Haywood Stackhouse, be confirmed and qualified as natural tutrix of her minor children, Lilla Stackhouse, Maud Stackhouse, Herbert Stackhouse, Blanche Stackhouse, and Mabel Stackhouse, the offspring of her marriage with the said Haywood Stackhouse, deceased, and let letters of natural tutorship accordingly issue to her, and let William H. H. Brooks be appointed and qualified as under tutor of said minors.

Parish of Plaquemines, Dec. 27, 1869.

(Signed) WILLIAM M. PRESCOTT,
Parish Judge.

Filed December 27th, 1878.

A true copy of the original on file and of record in my office.
Parish of Plaquemines, May 21st, 1878.

[L. S.] (Signed) D. A. THIBAUT, *Clk.*

311 *Sheriff's proces-verbal and adjudication to Sawyer.—Filed before special examiner May 30th*, 1878.

Whereas I, Oscar B. Sarpy, sheriff of the parish of Plaquemines, by virtue of a writ of seizure and sale, No. 2270, to me directed by the honorable the second judicial district court of Louisiana in and for the parish of Plaquemines, at the suit of James E. Zunts vs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and as tutrix of the minors Herbert Stackhouse, Blanche Stackhouse, Maude Stackhouse, and Mabel Stackhouse, and Mrs. Lilla Stackhouse, wife of J. W. Bryant, heirs & legal representatives of Haywood Stackhouse, deceased, after having fulfilled and complied with all the legal previous requisites, did seize the followin g-described property, to wit:

A certain tract of land, cultivated as a sugar plantation, and known by the name of New Hope plantation, situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about (23) twenty-three miles below the city of New Orleans, measuring (34½)
thirty-four and one half arpents front on said river by forty ar-
312 pents in depth, bounded above by the plantation of Octave Reggio, and below by the lands of René Sarpy, together with all the buildings and improvements thereon, sugar-house, machinery, agricul-

tural implements, horses, mules, cattle, and carts, and all other appurtenances thereto belonging or appertaining, together with 335 shares of the mortgage stock of the Citizens' Bank of Louisiana of one hundred dollars each, secured by mortgage on the said property; the 335 shares are reduced to 313 for the calculations of dividends or contributions, but the mortgage secures the 335 original shares.

And after having given due and legal notice to the said defendants of the said seizure, in the manner pointed out by law, I advertised the said before described property for sale after the expiration of the legal delay from the time of said notice, to wit, the 30th January, 1875, by advertisement, composed in English, announcing the sale to take place at the court-house at Pointe à la Hache, in this parish, on the sixth day of March, 1875, at 12 o'clock M.; said advertisements were inserted and published in English in the Plaquemines Sentinel, the official journal of the parish of Plaquemines, from the said 30th day of January, 1875, to the day of sale, being full thirty-six days from the date of the
313 first notice given in said newspaper; said advertisements were inserted and published in said newspaper on the 30th January, 6th, 13th, 20th, 27th February, and 6th of March, 1875.

And having further complied with and performed all the additional previous legal requisites, and after the said before described property having been duly appraised at $10,000, did expose the same at public sale at auction, according to law, at the said court-house of this parish, on the said sixth day of March, eighteen hundred and seventy-five, at 12 o'clock m.

And at the time and place of sale I did read verbatim, and in a loud and audible voice, the certificate of the recorder of mortgages in and for the parish of Plaquemines, delivered on the 5th March, 1875, and by which certificate it appears there are no other mortgages standing in the name of Sarah F. Brooks et al., and recorded against the before described property, than the following:

First. The one granted by William and Heywood Stackhouse in favor of the Citizens' Bank of Louisiana and of Messrs. Payne & Harrison, as per act executed before Adolphe Mazureau, not. pub., on the 15th October, 1856, to secure the payment of the sum of one hundred and
314 fifteen thousand dollars, which mortgage is now reduced to five thousand one hundred and seventy three $\frac{25}{100}$ dollars, being the amount due the Citizens' Bank for one hundred and thirteen shares in the capital stock of said bank, specially mortgaged and hypothecated. A certain tract of land cultivated as a sugar plantation, situated in the said parish of Plaquemines, on the right bank of the Mississippi River, at about seven leagues below the city of New Orleans, known by the name of New Hope plantation, measuring thirty-one arpents front on said river by forty arpents in depth, bounded on the upper line by the lands of Auguste and Octave Reggio, and below by lands of Antonie Valette, together with all the buildings and improvements thereon, negro cabins, stores, barns, sugar-house, machinery and apparatus, mules, horses, cattle, carts, drays, ploughs, farming utensils, &c. Recorded October 20th, 1856.

Second. The legal mortgage existing against Mrs. Sarah F. Brooks, widow of Heywood Stackhouse, in favor of her children as their tutrix, for clerk's certificate of inventory, dated June 2d, 1870, amounting to one hundred and twenty-seven thousand three hundred and seventeen dollars. Recorded June 10th, 1870.

315 Third. The claim of Dan. and Jas. D. Edwards against Mrs. Sarah F. Stackhouse for account of the above described planta-

tion, as per detailed bill, dated May 27th to November 29th, 1872, amounting to $1,482.47. Recorded December 13th, 1872.

Fourth. The claim of J. P. Brooks against Mrs. Sarah F. Stackhouse for services rendered as overseer on the above plantation, dated February 12th, 1873, amounting to $2,000. Recorded February 13th, 1873.

Fifth. The mortgage granted by Mrs. Sarah F. Stackhouse in favor of Ernest & Co., as per act passed before A. S. Beck, not. pub., on the 6th February, 1873, to secure the payment of fifteen thousand dollars, in three notes, dated February 6th, 1873, payable twelve months after date, secured by mortgage on the property hereinabove described. Recorded February 14th, 1873.

Sixth. The claim of Stauffer, Kent & Co. against Mrs. Sarah F. Stackhouse, as per detailed bill, dated June 14th, 1873, amounting to $125.37. Recorded June 27th, 1873.

Seventh. The claim of Ernest & Co. against Mrs. Sarah F.
316 Stackhouse, dated July 10th, 1873, for advances to make the sugar and rice crops on the Cedar Grove plantation for the year 1873, amounting to $3,500. Recorded July 10th, 1873.

Eighth. The claim of the st'm'r Empire against Mrs. Sarah F. Stackhouse for account of the Cedar Grove plantation, dated May 1st, 1874, for $198.10. Recorded May 6th, 1874.

Ninth. The claim of Sieward & Kip, dated May 1st, 1874, against Mrs. S. F. Stackhouse for account of Cedar Grove plantation, amounting to $1,045.84. Recorded May 6th, 1874.

Tenth. The claim of Sieward & Kip against the Cedar Grove plantation, dated May 7th, 1874, for seed rice, amounting to $1,156.00. Recorded May 12th, 1874.

Eleventh. The claim of Sieward & Kip, dated May 12th, 1874, for seed rice furnished to Mrs. S. F. Stackhouse for ⅜ of Cedar Grove plantation, amounting to $367.50. Recorded May 14th, 1874.

Twelfth. The claim of the State and parish against the estate of Heywood Stackhouse, as per tax bill, Dec'r 2d, 1874, for taxes due for
317 the year 1873, and special tax of 1872, amounting to $671.41. Recorded Dec'r 3rd, 1874.

Thirteenth. The claim of the State and parish against Mrs. S. F. Stackhouse, as per tax bill dated Dec'r 7th, 1874, for taxes due for the years 1873, 1872, 1871, 1867, amounting to $3,260$\frac{35}{100}$. Recorded Dec'r 8th, 1874.

Fourteenth. The mortgage resulting from a judgment rendered by the fourth district court for the parish of Orleans, on the 13th Dec'r, 1871, in the case of Payne and Harrison in liq. vs. Mrs. H. A. Stackhouse & W. Stackhouse, her husband, No. 23,335 of the docket of said court, for the sum of thirty-six thousand six hundred and fifty-two $\frac{20}{100}$ dollars, with interest at the rate of eight per centum per annum from the 29th May, 1869, and all costs of suit. Recorded April 13th, 1874.

Fifteenth. The one resulting from a judgment rendered by the hon. the fifth dist. court for the parish of Orleans, on the 29th February, 1872, in the case of W. & H. Stackhouse vs. James E. Zunts, No. 18850 of the docket of said court, allowing James E. Zunts twenty per cent. damages on the amount of the judgment enjoined, together with 8% interest. Recorded April 17th, 1872.

318 Sixteenth. The one resulting from a judgment rendered by the supreme court of the State of Louisiana, on the 1st Dec'r, 1873, in the case of W. & H. Stackhouse vs. James E. Zunts, No. 4019, for the sum of fifty thousand dollars, with 20% damages. Recorded Dec'r 17th, 1873.

Seventeenth. The one resulting from a judgment rendered by the hon. the parish court of the parish of Plaquemines, on the 24th Feb'ry, 1874, in the case of the State of La. vs. S. F. Stackhouse, No. 614 of the docket of said court, for the sum of three hundred and four $\frac{33}{100}$ dollars, with such penalties as may be fixed by law, and 5% on the amount of the judgment, with costs, &c. Recorded March 17th, 1874.

Eighteenth. The one resulting from a judgment rendered by the second judicial district court of the parish of Plaquemines, on the 7th of April, 1874, in the case of the State of La. vs. Sarah F. Stackhouse, No. 2140 of the docket of said court, for the sum of one thousand six hundred and eighty $\frac{03}{100}$ dollars, 5% on the amount of the judgment, and costs of suit. Recorded July 2d, 1874.

319 In faith whereof I hereunto set my hand and affix the seal of my office this 5th day of March, A. D. 1875.

[L. S.] C. V. THIBAUT,
Recorder.

When Silas W. Sawyer, of the parish of Plaquemines, being the highest and last bidder, the said before described property was adjudicated to the said Silas W. Sawyer, for the price and sum of six thousand six hundred and seventy dollars. Terms—cash, on the spot.

And in compliance therewith, and by order of James E. Zunts, the seizing creditor, the sheriff is dispensed from requiring from the purchaser, S. W. Sawyer, the balance of the adjudication coming to him, plaintiff, in execution, after satisfying taxes, costs, &c., as the same will be settled satisfactorily between the plaintiff in execution and the purchaser.

The purchaser to assume the mortgage existing on the said described property, in favor of the Citizens' Bank of Louisiana, to secure the payment of the three hundred and thirty-five shares, of one hundred dollars each, as per mortgage act executed by Adolphe Mazureau, not. pub., on the 15th October, 1856, granted by William
320 and Heywood Stackhouse, in favor of the Citizens' Bank of Louisiana, and of Messrs. Payne & Harrison, to secure the payment of the sum of one hundred and fifteen thousand dollars, which mortgage is now reduced to five thousand and one hundred and seventy-three $\frac{25}{100}$ dollars.

And in compliance with said adjudication the said Silas W. Sawyer has paid the State and parish taxes due and payable by the said New Hope plantation, as per tax bills dated December 7th, 1874, for taxes due for the years 1867, 1871, 1872, and 1873, recorded December 8th, 1874, amounting to—

The sum of three thousand two hundred and sixty $\frac{85}{100}$ dollars	$3,260 85
Clerk's costs	19 60
Printing	35
Sheriff's costs & keeping	167 75
Total	$3,483 20
And the balance, to wit, the sum of	3,186 80
the said purchaser retained in his hands, as per agreement and consent of plaintiff in execution above mentioned.	
	$6,670 00

321 Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such case made and provided, do sell and transfer the said before described property to the said Silas W. Sawyer, and all the rights and titles which the said defendants had in or to the said before described property, to have and to hold the same to the said Silas W. Sawyer, his heirs and assigns, forever.

In witness whereof I have hereunto signed my name in the parish of Plaquemines, in the State of Louisiana, this sixth day of March, in the year one thousand eight hundred and seventy-five, and the ninety-ninth year of the Independence of the United States of America.

(Signed) O. B. SARPY,
Sheriff of the Parish of Plaquemines.

Signed in presence of—
(Signed) T. LEONARD.
(") C. V. THIBAUT.

I do hereby certify that the above and foregoing sheriff's deed was recorded in book 20, No. 3297, lot 5 of conveyances, on the 8th March, 1875.

322 In faith whereof I grant these presents under my hand and the impress of my seal of office this eleventh day of September, A. D. 1877.

[L. S.] (Signed) A. E. LIVANDAIS,
Recorder.

Record No. 4019 of the supreme court of the State of Louisiana.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

Petition.—Filed December 20th, 1867.

JAMES E. ZUNTS
vs.
WILLIAM STACKHOUSE & HEYWOOD STACKHOUSE. } No. 18719.

To the honorable the 2nd judicial district court of Louisiana, in and for the parish of Plaquemines:

The petition of James E. Zunts, of the city of New Orleans, respectfully represents:

That he is the holder and owner of two promissory notes, each
323 for twenty-five thousand dollars, dated New Orleans, February 1st, 1864, and payable on the 1st day of February, 1866, at the office of M. Judson & Co., New Orleans, drawn by William Stackhouse and Heywood Stackhouse, both of the parish of Plaquemines, to their own order, and by them endorsed, bearing interest from date until maturity at six per cent. per annum, and from and after maturity at eight per cent. per annum until paid.

That on the 15th (fifteenth) day of February, 1865, the said William and Heywood Stackhouse came and appeared before Hugh Madden, a notary public in and for the parish of Orleans, and by a public act passed

in proper and authentic form confessed and declared that they were justly and truly indebted unto your petitioner in the full sum of fifty thousand dollars with interest, as evidence of which they then furnished the two promissory notes aforesaid, which, after being paraphed "Ne varietur" by the notary and identified with the act of mortgage then made and executed, were delivered to the said James E. Zunts, the petitioner, and that by the said authentic act of the 15th day of February, 1865, in order to secure the payment of the notes with the
324 interest thereon, they mortgaged a certain tract of land known by the name of Bellechasse, situate in the parish of Plaquemines, all which will more fully and at large appear from the said notes and from the authentic copy of the act of mortgage hereunto annexed as parts of this petition.

Now, the petitioner alleges that the said William Stackhouse and Heywood Stackhouse neglected and refused, and still neglect and refuse, to pay the said notes and interest, although they have been due since the first day of February, 1866, and payment thereof has been demanded.

He avers that the act under which he claims is one importing confession of judgment, and that he is entitled to executory process.

Wherefore he prays that it may please this honorable court to order that a writ of seizure and sale issue, commanding the sheriff to seize and sell, after due notice and proceedings, the said mortgaged property to pay and satisfy your petitioner's claim, amounting to fifty thou-
325 sand dollars, with interest from the first day of February, 1864, at six per cent. per annum until the first day of February, 1866, and thereafter at eight per cent. per annum until paid; and petitioner prays for all such further order as equity and the nature of the case require.

(Signed) RANDELL HUNT,
For Petitioner.

Order.

Let a writ of seizure and sale issue as above prayed for and according to law.

Parish of Plaquemines, Louisiana, January 31st, 1867.

(Signed) A. CAZABAT,
Judge 2nd Dist., La.

Note annexed to petition—Filed December 20th, 1867.

JAMES E. ZUNTS.
vs.
WILLIAM STACKHOUSE & HEYWOOD STACKHOUSE. } No. 18719.

$25,000.] NEW ORLEANS, *February 1st*, 1864.

On the first day of February, 1866, after date, we promise to pay to the order of our ourselves, at office of Judson & Co., New Orleans, twenty-five thousand dollars, with interest from date to maturity
326 at six per cent. per annum, and thereafter at eight per cent. per annum until paid. Value received.

(Signed) W. STACKHOUSE.
" H. STACKHOUSE.

(Endorsed:) W. Stackhouse, H. Stackhouse.

(Across the face:)
Original act stamped fifty dollars U. S. internal revenue.
(Signed) HUGH MADDEN,
Not. Pub.

Ne varietur. New Orleans, La., February 15th, 1865.
(Signed) HUGH MADDEN,
Not. Pub.

Note annexed to petition.—Filed Dec'r 20, 1867.

JAMES E. ZUNTS
vs.
WILLIAM STACKHOUSE & HEYWOOD STACKHOUSE. } No. 18719.

$25,000.] NEW ORLEANS, *February 1st*, 1864.

On the first day of February, 1866, after date, we promise to pay to the order of ourselves, at office of Judson & Co., New Orleans, twenty-five thousand dollars, with interest from date to maturity at six per cent. per annum, and thereafter at eight per cent. per annum until paid. Value received.

(Signed) W. STACKHOUSE.
" H. STACKHOUSE.

(Endorsed:) W. Stackhouse, H. Stackhouse.

(Across the face:)
Original act stamped fifty dollars U. S. internal revenue.
(Signed) HUGH MADDEN,
Not. Pub.

Ne varietur. New Orleans, La., February 15th, 1865.
(Signed) HUGH MADDEN,
Not. Pub.

327 *Act of mortgage (copy) annexed to petition.—Filed Dec. 20th*, 1867.

JAMES E. ZUNTS
vs.
W. STACKHOUSE & H. STACKHOUSE.

STATE OF LOUISIANA,
Parish of New Orleans, City of New Orleans:

Be it known that on this fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, before me, Hugh Madden, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared William Stackhouse and Heywood Stackhouse, both of the parish of Plaquemines, in this State. who declared that they are now justly and truly indebted unto James E. Zunts, of this city, in the full sum of fifty thousand dollars ($50,000.00) and interest, as evidence of which they, the said Messrs.
William Stackhouse and Heywood Stackhouse, have hereby fur-
828 nished two certain promissory notes drawn by them to the order of and endorsed by themselves, dated the 1st day of February,

eighteen hundred and sixty-four, and made payable at the office of Judson & Co., in this city, each for the sum of twenty-five thousand dollars, on the first day of February, eighteen hundred and sixty-six, bearing interest from date until maturity at the rate of six per cent. per annum, and from and after maturity until final payment at the rate of eight per cent. per annum, which said notes, after being paraphed "Ne varietur" by me, notary, in order to identify them with this act, were delivered to the said James E. Zunts, who hereby acknowledges the receipt thereof.

Now, therefore, in order to secure the punctual payment of said promissory notes at maturity as well as of all interest that may accrue thereon, the said Messrs. William Stackhouse and Heywood Stackhouse moreover declared that they do by these presents specially mortgage and hypothecate in favor of the said James E. Zunts, his heirs and as-
329 signs, and without further subrogation to enure to the use and benefit of any and all future holder or holders of the said promissory notes, the following described property, to wit:

That certain tract of land &c., cultivated as a sugar plantation, and known by the name of Bellechasse plantation, situate in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about five and a half leagues from the city of New Orleans, and measuring fifty seven and a half acres front on said river by forty arpents in depth, bounded on the upper side by the lands of Rosette Poupont, and below by that of Juan y de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, ploughs, carts, and all other movables belonging and appertaining, as the same were purchased by said Messrs. William Stackhouse and Heywood Stackhouse from the heirs of Samuel Packwood, by an act passed before the undersigned notary on the 13th January, 1865.

And here the said William Stackhouse and Heywood Stack-
330 house promise and bind themselves not to alienate, deteriorate, or encumber the property herein described to the prejudice of this mortgage, which is hereby accepted by the said James E. Zunts to this effect, also present.

The said James E. Zunts furthermore declares that he hereby dispenses with the renunciation of the wives of said William Stackhouse and Heywood Stackhouse to this act; also with a certificate from the recorder of said parish of Plaquemines, to show the encumbrances, if any exist, in the names of said Stackhouse, as is otherwise required by article three thousand three hundred and twenty-eight of the Civil Code of this State.

United States internal revenue stamps for fifty dollars have been affixed hereto, only defaced at the execution hereof.

Thus done and passed at my office in New Orleans aforesaid, in the presence of Mr. Joseph Hooper and James Gerrard, competent witnesses, of this city, who hereunto sign their names with the parties and me, the said notary, the day and date set forth in the caption
331 hereof.

(Original signed) JAMES GERHARD. } W. STACKHOUSE.
JOSEPH HOOPER. } H. STACKHOUSE.
JAMES E. ZUNTS.
HUGR MADDEN, *Not. Pub.*

A true copy.
New Orleans, January 21st, 1867.
(Signed) J. BENDERNAGEL,
Not. Pub., & Custodian Records of Hugh Madden, dec'd.

Writ of seizure and sale.—Filed December 20th, 1869.

JAMES E. ZUNTS
vs.
WM. STACKHOUSE & H. STACKHOUSE. } No. 18719.

THE STATE OF LOUISIANA,
Parish of Plaquemines:

Second judicial district court.

To Victor Reaud, ex-sheriff of the parish of Plaquemines, greeting:

You are hereby commanded in the name of the State of Louisiana, and of the second judicial district court sitting in and for the parish of Plaquemines, to seize and sell, after due legal notices and advertisements required by law, the hereinafter described landed property and moveables, to wit:

332 A certain tract of land cultivated as a sugar plantation, and known by the name of Belle Chasse plantation, situate in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about five and a half leagues from the city of New Orleans, and measuring fifty-seven and a half acres front on said river by forty arpents in depth, bounded on the upper side by the lands of Rosette Poupont, and below by that of Juan y de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, ploughs, carts, and all other moveables belonging and appertaining as the same were purchased by the said William Stackhouse and Heywood Stackhouse from the heirs of Samuel Packwood, by an act passed before Hugh Madden, notary, in the city of New Orleans, on the 13th January, 1865, and out of the proceeds of the sale of the said landed property and moveables that you pay to James E. Zunts, plaintiff, her claim against the said W. & H. Stackhouse,

333 defendants, to wit, fifty thousand dollars, with interest from the 1st day of February, 1864, at six per cent. per annum until the first day of February, 1866, and thereafter at eight per cent. per annum until paid, cash.

And how you shall have executed this writ make due return in our said court in seventy days, as the law directs.

Witness the honorable A. Cazabat, judge parish of Plaquemines, February the 8th, 1867.

(Signed) ARMAND LARTIGUE,
Clerk.

Sheriff's return to writ.

Received, parish of Plaquemines, February 15th, 1867, and on the 16th of the same month and year served a copy of petition and citation and also notice of seizure and sale on William and Heywood Stackhouse personally, at their residence in this parish, on the right bank of the Mississippi River, the said William Stackhouse on the Bellechasse plantation, at about 27 miles above the court house, and the said Hey-

334 wood Stackhouse on the Live Oak Grove plantation, at about 20 miles above the court-house, and on the 18th of same month and year received a writ of injunction from the honorable the 2nd judicial district court in and for the parish of Plaquemines.

Parish of Plaquemines, February 20th, 1867.

(Signed) V. REAUD,
Sheriff.

Notice of seizure.—Filed December 20th, 1867.

JAMES E. ZUNTS
vs.
WILLIAM STACKHOUSE & H. STACKHOUSE. } No. 18719.

In the 2nd judicial district court of the parish of Plaquemines. Sheriff's office, parish of Plaquemines.

PARISH OF PLAQUEMINES,
February 16th, 1867.

To William Stackhouse and Heywood Stackhouse:

Take notice that I have seized, and in three days from the service hereof shall proceed to advertise and sell according to law, the following described property, to wit:

335 A certain tract of land cultivated as a sugar plantation, and known by the name of Bellechasse plantation, situated in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about five and a half leagues from the city of New Orleans, and measuring fifty-seven and a half acres front on the Mississippi River by forty arpents in depth, bounded on the upper line by the lands of Rosette Poupont, now F. & H. Villoré, and below by that of Juan y de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, ploughs, carts, and all other moveables belonging and appertaining, as the same was purchased by you from the heirs of Samuel Packwood by an act passed before Hugh Madden, notary public in New Orleans, on the 13th of January, 1865, to pay and satisfy the writ issued in this case, say the sum of $50,000, with interest and costs, unless the same is immediately paid.

(Signed) V. RÉAUD,
Sheriff.

336 *Petition & order for a jury term.—Filed December 20th, 1867.*

JAMES E. ZUNTS
vs.
WM. STACKHOUSE, H. STACKHOUSE. } No. 18719.

To the honorable A. Cazabat, judge of the second judicial district of the State of Louisiana:

The petition of James E. Zunts, of New Orleans, respectfully represents unto your honor:

That since the forced emancipation of all the slaves owned in the United States as property, he sold a valuable sugar plantation situated in the parish of Plaquemines to William Stackhouse, of that parish, receiving in payment therefor a portion cash, and for the balance of the purchase price said Stackhouse gave his promissory notes, bearing mortgage with the vendor's privilege on said plantation.

Your petitioner avers that the contract was entered into in the very best faith, that the plantation was well known to the said Stack-
337 house, he having lived in its vicinity for many years, and that to refuse payment of his said notes is an act of bad faith on his part, unwarranted in law, and is destructive of the rights of your petitioner.

Your petitioner specially avers and represents that no questions like the many which are now daily raised growing out of the late war can be raised in these premises.

Your petitioner has always been a loyal man to the government, has done no act by which his property can be suspected of any liability to confiscation, and that at the time said sale was made he was able to and did give a title beyond any suspicion.

He further represents to your honor that said Stackhouse is now in possession of said plantation and is engaged in raising a crop of sugar thereon; that by operation of law your petitioner has the same lien and privilege on this growing crop that he has on the land itself to secure the payment of the notes of the said Stackhouse.

Petitioner shows that this note falling due, amounting to fifty
338 thousand dollars ($50,000), with interest for twelve months, he obtained an order of seizure and sale thereon from your honor, and the sheriff of said parish seized said plantation and was about to cause it to be sold to satisfy your petitioner's claim of fifty thousand dollars ($50,000), when said Stackhouse, on grounds perfectly frivolous, untrue in point of fact, made only for the purpose of gaining time, and entirely a mis'tatement of facts, obtained from your honor a writ of injunction restraining said sheriff from proceeding further in the premises.

Your petitioner avers that the bond given by said Stackhouse is altogether insufficient in amount to secure the rights of your petitioner, and that the security thereon is not such as petitioner would be entitled to in law.

Petitioner now begs to call your honor's attention to the fact that no regular session of said court will be held in said parish until the month of October next. He begs leave also to call your honor's attention to that equitable statute giving your honor the right as well as making
339 it your duty to call a special session if in your honor's judgment justice demands it. (See acts of 1855, page 491, or Revised Statutes, 284, section 49.)

Notwithstanding the onerous duties your honor has to perform in the parishes of Jefferson and St. Bernard, and the trouble and expense attending the trip down to said parish of Plaquemines, he prays to submit his humble petition soliciting your honor to call a special session for said parish in conformity to law, to be held in the month of May next.

Petitioner would also respectfully show that there are several criminal cases pending in said parish that ought to be disposed of in same manner, either by admitting the parties to bail, by trial, or otherwise, and there are also a large number of civil cases on said docket that should be tried in order to further the interests of all the litigants in said court.

And as in duty bound your petitioner will ever pray, &c.

(Signed) JAMES FULLER, *Att'y.*

340 *Order.*

Let a special jury term of the district court in and for the parish of Plaquemines be held on the third Monday (20) of May, A. D. 1867, after due legal notice and publication according to law, and let a jury be drawn and summoned to attend said term according to law.

Carrollton, La., April 15th, 1867.

(Signed) A. CAZABAT,
Judge Second District, La.

Petition.—Filed December 20th, 1867.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

To the honorable the second judicial district court of the State of Louisiana in and for the parish of Plaquemines:

The petition of William Stackhouse and Heywood Stackhouse, residing in the parish of Plaquemines, respectfully represents:

341 That James E. Zunts, residing in the city of New Orleans, has applied for and obtained an order of seizure and sale to enforce the payment of an alleged debt which he pretends to be due to him by your petitioners, of fifty thousand dollars, exclusive of interest and costs, the payment of which is secured by a special mortgage on a certain tract of land, to wit:

That certain tract of land cultivated as a sugar plantation and known by the name of Bellechasse plantation, situate in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about five and a half leagues from the city of New Orleans, and measuring fifty-seven and a half acres front on said river by forty arpents in depth, bounded on the upper side by land of Rosette Poupont, free woman of color, and below by that of Juan Y. de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, ploughs, carts, and all other moveables belonging or appertaining to said plantation, all of which, together with other neces-

342 sary particulars, will more fully appear by reference to the record in the case of said Zunts vs. your petitioners in this honorable court; that they have been notified of said executory process, and that a seizure will be made in due course of law.

Now your petitioners allege, and such the truth is, that the notes and mortgage on which said executory process has been issued were given without any valid cause delation.

That on or about the 13th January, 1865, your petitioners purchased of said Zunts the before described tract of land, which said tract of land had been adjudicated to said Zunts, and which sale was confirmed by the heirs of Packwood for the sum of one hundred thousand dollars, fifty thousand dollars of which were paid in cash, and the receipt thereof acknowledged, and for the balance of said price your petitioners furnished their seventeen promissory notes, all drawn by them to the order of said Zunts and endorsed by him, dated on or about the 13th January, 1865, made payable at the banking house of Judson & Co., New Orleans, on the first day of March, eighteen hundred and sixty-

343 five, bearing interest at the rate of eight per cent. per annum from the first day of March, eighteen hundred and sixty-four, and for the following sums, to wit:

One for the sum of four thousand five hundred and thirty-seven $\frac{55}{100}$ dollars.

One for the sum of four thousand five hundred and thirty-seven $\frac{50}{100}$ dollars.

One for the sum of four thousand five hundred and thirty-seven $\frac{50}{100}$ dollars.

One for the sum of two thousand two hundred and sixty-eight $\frac{77}{100}$ dollars.
One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
344 One for four thousand five hundred and thirty-seven $\frac{55}{100}$ dollars.
One for four thousand five hundred and thirty-seven $\frac{55}{100}$ dollars.
One for eighteen thousand two hundred and thirty-seven $\frac{13}{100}$ dollars.
One for four hundred and fifty-three $\frac{75}{100}$ dollars.

The payment of which notes was secured by a special mortgage on the aforesaid property purchased by your petitioners, all of which together with other necessary particulars will more fully appear from the annexed duly certified copy of the act of partition, compromise and sale marked "A," made part of this petition. That all said notes have been paid, and your petitioners have paid the entire price of said property, and your petitioners further represent that in the aforesaid act of partition, compromise and sale a large number of slaves was enumerated and named, but it is expressly stipulated in said contract that said slaves are mentioned simply as a description of the property originally purchased by said Zunts and not for the purpose of conveying the
345 same to your petitioners, and your petitioners further represent that shortly after said contract was entered into as aforesaid, to wit, on 15th February, 1865, said Zunts induced your petitioners to execute the said two promissory notes for twenty-five thousand dollars each, on which his suit is brought, and to grant a special mortgage on the same property, to secure the payment of said notes and alleged indebtedness, all of which together with other necessary particulars will more fully appear by reference to said act of mortgage made part of the petition, marked B.

Now your petitioners aver and charge, and such the truth is, that said notes were given and said mortgage granted without any consideration whatever, and your petitioners were not then nor are they now indebted to said Zunts in any amount whatever; that said Zunts persuaded your petitioners to give said notes and mortgage by assuring them that long before the maturity of said notes he would sell to them the slaves enumerated in said contract hereinbefore referred to,
346 and would convey to them a good and valid title to said slaves, well knowing that he could not do so, inasmuch as slavery had been abolished, and that he had no right, title, or interest in the persons who had formerly belonged to Packwood and himself as slaves; and petitioners further represent that they never had any other transaction with said Zunts, except the purchase of the plantation and its appurtenances aforesaid, and never owed him any debt except the price of said property, to wit, one hundred thousand dollars, which has been paid as aforesaid, and your petitioners aver that the enforcement of the payment of said two promissory notes given without any legal consideration is illegal, iniquitous, and against good conscience, and will cause them an irreparable injury; that the only adequate remedy for the protection of their legal and equitable rights is an injunction.

Therefore your petitioners respectfully pray that it may please the court to order that a writ of injunction issue commanding said
347 Zunts and the sheriff of the parish of Plaquemines not to proceed with execution of said order of seizure and sale until the further order of the court on your petitioners entering into bond and security in such sum as the court may require, conditioned as the law directs; that said James E. Zunts and said sheriff may be cited to appear and answer the petition; that after due proceedings had judgment be rendered in favor of your petitioners against said defendant making said injunction perpetual and decreeing said notes and mortgage null and void, and condemning said Zunts to pay to your petitioners five thousand dollars damages for his illegal acts and doings in bringing this unjust suit and compelling your petitioners to defend the same at great expense, together with interests and costs, and your petitioners pray for all such other and further aid, relief, and remedy as the nature of their case may require and the law will permit, and they will ever pray, &c., &c.

(Signed) C. ROSELIUS & ALFRED PHILIPS,
For Pet'r's.

Wm. Stackhouse, one of the petitioners, being duly sworn, deposes and says that all the facts and allegations set forth in the fore-
348 going petition are correct and true, and that an injunction is the only adequate remedy for the protection of the legal rights of the petitioners, and that the execution of said order of seizure and sale would cause them an irreparable injury.

(Signed) WM. STACKHOUSE.

Sworn to and subscribed before me this 15th February, 1867.

(Signed) PAUL W. COLLENS,
Third Justice of the Peace.

Order.

Let a writ of injunction issue as prayed for and according to law upon the petitioners furnishing bond and surety in the sum of seven thousand dollars conditioned as the law directs.

Parish of Plaquemines, La., February 15th, 1867.

(Signed) A. CAZABAT,
Judge 2d Dist. La.

Service accepted.

Parish of Plaquemines, February 17th, 1867.

(Signed) V. RÉAUD,
Sheriff.

349 *Bond for injunction.—Filed December 20th*, 1868.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Know all men by these presents that we, William and Heywood Stackhouse, as principals, and James Philipp Waters, all of this parish, as security, are held and firmly bound unto James E. Zunts, of this parish, in the penal sum of seven thousand ($7,000) dollars, for the payment whereof to the said J. E. Zunts, his executors, administrators,

or assigns, we jointly and severally bind ourselves, our heirs, executors, administrators, respectively, by these presents, as witness our respective names hereunto affixed, at the parish of Plaquemines, this 17th day of February, A. D. 1867.

Whereas, in and by a writ of seizure and sale issued out of this honorable court at the suit of James E. Zunts vs. William & H. Stackhouse, and numbered 906 on the docket of the said court, and which suit is now pending therein;

The condition of which is such that if the said defendants,
350 William and Heywood Stackhouse, shall satisfy whatever judgment may be rendered against them in *this* case this injunction should be declared wrongfully obtained in the suit pending as above mentioned, then this obligation to be null and void, or else to remain in full force and virtue.

(Signed) W. & H. STACKHOUSE.
(Signed) J. P. WATERS.

Signed and delivered in presence of—
(Signed) ARMAND LARTIGUE.
" S. MARTIN.

Document A, annexed to petition.—Filed Dec'r 20th, 1869.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, before me, Hugh Madden, a notary public in and for the parish and city of New Or-
351 leans, State of Louisiana aforesaid, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared the following-named heirs and representatives of heirs of the late Samuel Packwood, deceased, to wit:

First. Theodore J. Packwood, of the parish of Plaquemines, in this State, herein acting in his own individual name and as being entitled to one-seventh interest and portion of the succession of the said Samuel Packwood, deceased.

Second. Mrs. Mary A. C. Charlton, surviving widow of the said Samuel Packwood, deceased, acting in her own individual name, and as such entitled to one-half interest or portion of the succession of the said Samuel Packwood, deceased.

Third. Henry T. Lonsdale, of this city, herein acting in his capacity as the agent and attorney in fact of Mistress Mary Ann Morton, wife of lawful age of George C. Morton, of the city of Baltimore, in the State of Maryland, by virtue of a power of attorney to that effect, dated the 29th day of November last, and hereto annexed for reference,
352 the said Mistress Mary Ann Morton being entitled to one-seventh interest portion of said succession.

Fourth. George W. Babcock, of this city, herein acting in his capacity as the duly authorized agent and attorney in fact of Mrs. Emily E. Gasquet, wife of lawful age of Dorsey Neville, of this city, and of Mistress Alice A. Gasquet, wife of lawful age of Zerega, of Mrs. Maria L. Gasquet and of Mrs. Martha V. Gasquet, and also in his ca-

pacity as tutor of Francis E. Gasquet, a minor, they being the children of Emily A. Dorsey and James A. Gasquet, and each of them, said Emily E. Gasquet, Alice A. Zerega, Maria L. Gasquet, Martha E. Gasquet, and Francis E. Gasquet, being entitled to one-fifth of the share or interest of their said deceased mother, Emily A. Gasquet, in the succession of the said Samuel Packwood, the share of the said Emily A. Gasquet being the half of one seventh interest or portion coming to her by representation of her mother, Emily Packwood, wife by first marriage of Greenbury Dorsey.

353 Fifth. Mrs. Frances Hollis Dorsey, wife of lawful age of Julian Neville, of this city, and by him duly authorized, and assisted by him herein, acting in her own name and claiming for her share one-fourteenth interest or portion of said succession, which she is entitled to receive as the half of the share coming to her deceased mother, Emily Packwood, wife by first marriage of the said Greenbury Dorsey, the other half of said share, which is equal to one-seventh of said succession, coming to the heirs of her deceased sister, Emily A. Gasquet.

Sixth. Theodore J. Packwood, acting for and representing Samuel Packwood Dorsey, residing in California, by virtue of a power of attorney filed in the record of A. Mazureau, late a notary public in this city, under date 18th June, 1860.

Also, Greenbury Dorsey of this city, herein representing John C. Dorsey, residing in California, by virtue of a power of attorney executed before James Graham, late a notary public in this city, on the 4th June, 1859.

354 Also, Hugh B. Eggleston of this city, the attorney of Thomas B. Hart of this city, who is the agent and attorney in fact of Mistress Susan B. Dorsey, wife of H. R. Miller of Paris, in the State of Kentucky, as per power of attorney, filed in the record of said notary Mazureau on the 18th June, 1860.

Also, Edward W. Huntington of this city, the special tutor of Dorsey McKinn, Ernest T. Fellowes, of this city, the special tutor of the minor W. McKinn, B. L. Lynch, of this city, special tutor of the minor Lizzie U. McKinn, and Robert Swain, of this city, special tutor of the minor Morton McKinn, said minors being the children of Julia M. Dorsey, deceased, wife of Robert McKinn, of the State of Missouri; and

Also, the said Greenbury Dorsey, representing said Miss Alice Dorsey as her attorney in fact.

The above-named Samuel Packwood Dorsey, John C. Dorsey, Mrs. Susan B. Miller, Alice W. Dorsey, and Mrs. Julia U. McKinn, deceased, are the issue of the marriage of the said Greenbury Dorsey, with Eliza H. Packwood his second wife, and they came to the succession of

355 the grandfather, the said Samuel Packwood, by representation of the said mother Eliza H. Packwood, who was entitled to one-seventh of said succession, and by reason thereof, each of them (said minors) through their said mother Julia U. McKinn, are entitled to claim one thirty-fifth part of the whole.

Seventh. George S. Lacey, of this city, herein acting for and in behalf of Mrs. Catherine Morry wife of lawful age of D. B. Morry, of the State of Ohio, she being the sole heir of the estate of Thomas W. Packwood, deceased, the said estate of Thomas W. Packwood, deceased, being entitled to one-seventh interest or portion of the succession of the said Samuel Packwood.

Eighth. Samuel H. Torrey of this city, herein representing George Horatio Packwood, a minor, residing in the State of New York, in his capacity as special tutor of said minor, confirmed by the second district

court of New Orleans, the said minor is entitled to one-seventh interest or portion of said succession.

Ninth. William R. Mills of this city, representing Francis Joseph Packwood, a minor residing in said city of New York, in his
356 capacity of special tutor of said minor, appointed as such by the second district court of New Orleans, the said minor Francis Joseph Packwood is entitled to one-seventh interest or portion of said succession and tenth. James E. Zunts, of this city, herein acting for himself and as a party in interest herein.

The above-named parties, appearers, declared that the plantation known as the Bellechasse plantation, and slaves, situate in the parish of Plaquemines, on the right bank of the Mississippi River, in this State, and formerly belonging to the succession of the said Samuel Packwood, was sold on the tenth day of March, eighteen hundred and sixty, in pursuance to an order of the second district court of New Orleans, to said James E. Zunts, for the price and sum of two hundred and fifty thousand dollars ($250,000.00), payable as mentioned in the proces verbal of Julian Neville, of this city, the auctioneer who sold the same, and whose proces verbal is of record in the archives of said notary Mazureau.

And whereas the said James E. Zunts has paid for said
357 plantation under said sale and adjudication the sum of one hundred and sixteen thousand four hundred and eighty-eight dollars $\frac{08}{100}\frac{17}{21}$ ($116,488.08.$\frac{17}{21}$), and the balance of said price is claimed as still due and owing by him, and said sum of one hundred and sixteen thousand four hundred and eighty-eight $\frac{08}{100}\frac{17}{21}$ dollars paid as aforesaid has been by an act of partition passed before said notary Mazureau on the 23d day of March, eighteen hundred and sixty-one, partitioned to a certain extent among the heirs of said Samuel Packwood, deceased, as named in said act of partition and to the extent and in the sums therein set forth, to which act of partition, a copy of which is annexed hereto, reference is hereby specially made by the parties hereto.

And whereas also, since the said sale and adjudication of said plantation and slaves to said James E. Zunts, and since the execution and passage of said act of partition of the twenty-third day of March, eighteen hundred and sixty-one, two litigations have sprung up and are now pending, one thereof wherein the said Theodore J. Packwood in
358 his said capacity as testamentary executor of the last will and testament of the said Samuel Packwood, deceased, has brought suit for the unpaid installments of the purchase price of said plantation and slaves against the said James E. Zunts, to which demand the said Zunts alleges that he has various grounds of defence.

And the other of said litigations growing out of the said partition of the said twenty-third March, eighteen hundred and sixty-one, and entitled Emily Dorsey and others vs. Theodore J. Packwood, No. 15253 of the docket of said second district court of New Orleans, and which embraces a contestation for the distribution of the proceeds of said plantation and slaves sold as aforesaid in litigation, Mistress Mary A. C. Packwood, widow of said Samuel Packwood, has intervened and claimed one-half of said proceeds as belonging to the community of acquets and gains existing between her and her said deceased husband.

And whereas also, all of the said heirs, by themselves, or their duly authorized legal representatives have for the purpose of putting
359 an end to said pending litigations *litigations*, and of making among themselves a full, final, and complete partition of the succession of the said Samuel Packwood entered into a compromise with the said James E. Zunts, Mrs. Mary A. C. Packwood, and with each

other, whereby the sale and title of said plantation and slaves shall be confirmed to the said James E. Zunts, and the proceeds arising therefrom and thereby finally divided and distributed among the heirs of said Samuel Packwood, all of which has been already agreed upon by an agreement to that effect signed by the heirs and representatives of heirs of the said Samuel Packwood, which agreement is in the words and figures following, to wit:

Whereas a litigation is now pending in the second district court of New Orleans, growing out of the partition of the succession of Samuel Packwood in the suit entitled Emily A. Dorsey et als., vs. Theodore J. Packwood et als., numbered 15253, on the docket of suits in said second district court, which embraces a contestation for the distribution
360 of the proceeds of the plantation in the parish of Plaquemines, known as the Bellechasse plantation, which was sold to effect a partition among the heirs of the late Samuel Packwood, and whereas the widow of the late Samuel Packwood, to wit, Mrs. Mary A. C. Packwood has intervened in said litigation and claimed one-half of said proceeds as belonging to the community of acquets and gains existing by the laws of Louisiana between her and the said Samuel Packwood, which litigation is now pending on appeal before the supreme court of the State of Lonisiana.

And whereas another litigation also exists and is now pending in the second district court of New Orleans, in which Theodore J. Packwood, acting in his capacity of testamentary executor of the last will and testament of said Samuel Packwood, has brought suit for the unpaid instalments of the price of said Bellechasse plantation against James E. Zunts, the purchaser of the same, against which demand the purchaser of the same, said James E. Zunts, pretends to set up various grounds of defence, and whereas moreover the said Zunts for the purpose of
361 putting an end to said litigation has proposed as a compromise and final settlement of the same to pay in addition to what has been already paid the sum of fifty thousand dollars in cash, and the further sum of fifty thousand dollars payable on the first day of March, eighteen hundred and sixty-five, with interest thereon at the rate of eight per cent. per annum from the first day of March, eighteen hundred and sixty-four, for which the said Zunts shall furnish (the notes) in such sums as to suit the purpose of this partition of William Stackhouse and H. Stackhouse payable as before stated with interest; which said William Stackhouse and H. Stackhouse have agreed to purchase the Bellechasse plantation by act of sale to be executed concurrently with this agreement, said notes are to be drawn to the order of and endorsed by James E. Zunts, and to be secured by a first mortgage on said plantation; that said Zunts further agreeing to pay twenty-five hundred dollars in part payment of the counsel fees of said Theodore Packwood.

Now, therefore, the undersigned, the heirs and the representa-
362 tives of the late Samuel Packwood and Mrs. Mary A. C. Packwood, all acting either for themselves or by their duly authorized representatives, deeming it advisable to put an end to the respective litigations hereinbefore recited, and for the purpose of compromising and finally adjasting the same do hereby agree and consent as follows, to wit:

First. It is agreed that the proposition made by the said James E. Zunts be accepted, subject, however, to the conditions and stipulations contained in the following clause of this act of compromise.

Second. The money and notes to be furnished by said James E.

Zunts shall be paid into the hands of Hugh Madden, notary public, to be by him distributed in accordance with the stipulations hereinafter set forth, said notes to be given for the sums respectively set forth in schedule A. hereto annexed and made part of this agreement and signed by the parties to identify it herewith.

Third. The amount deposited in the Bank of Louisiana
363 ($45,983.40) forty-five thousand nine hundred and eighty-three $\frac{40}{100}$ dollars shall be withdrawn from said bank and deposited in the hands of said notary, to be by him deposited between the widow and heirs of said Samuel Packwood in accordance with the terms of this compromise.

Fourth. The further partition of the succession of said Samuel Packwood shall be proceeded in before Hugh Madden, notary public, upon the following basis; the amount to be partitioned and distributed shall consist—

First. Of the amount of cash already received by each of the heirs in the course of this partition, to wit, fifty-eight thousand two hundred and forty-four $\frac{04}{100}$ dollars ($58.244.04).

Second. The cash received and to be received under the compromise with the said James E. Zunts, say $50,000 (fifty thousand dollars).

Third. The notes which by the terms of this agreement are to be furnished by the said Zunts, say $50,000 (fifty thousand dollars), with current interest.

Fourth. The amount standing to the credit of the executor in the
364 Bank of Louisiana, say $45,983.40 (forty-five thousand nine hundred and eighty-three $\frac{40}{100}$ dollars), making in all the sum of two hundred and four thousand and twenty-seven $\frac{40}{100}$ dollars.

Fifth. In the partition to be made each heir shall be charged with the amount of cash already received by him in the previous distribution already made in the course of this partition.

Sixth. A debt of $11,588.44 (eleven thousand five hundred and eighty-eight $\frac{44}{100}$ dollars), being the principal and interest of a claim of Thomas W. Packwood growing out of the settlement of his mother's succession in June, 1850, as established by a decree rendered in the course of the administration of said succession shall be paid concurrently with the distribution made herein.

Seventh. The parties hereto agreeing have adopted and do adopt the schedule hereto annexed marked A, as the basis of the distribution of the respective assetts which are the subject of this partition, and do
365 agree that the said distribution shall be made with the notary charged with the partition in accordance with the same and they moreover adopt the assessment established in said schedule upon the share of each of the parties interested for the payment of the debt due to the heirs of Thomas W. Packwood.

Eight. The costs of this partition, that is to say, the notary fees shall be borne by the parties in interest in the proportion of the respective sums received by them, and any other costs incident to these proceed-

ngs, not now contemplated by the parties hereto shall be paid by them in the same proportion.

(Signed) GEO. S. LACEY,
Agent and Att'y for Catherine Morry, wife of D. B. Morry, and heir of Thomas W. Packwood.
J. N. LEA,
Att'y in fact of Mrs. M. A. C. Packwood.
T. J. PACKWOOD.
SAMUEL P. DORSEY,
Pr. pro. T. J. PACKWOOD.
H. B. EGGLESTON,
Att'y for S. B. Miller, one of the heirs.
FRANCIS H. NEVILLE,
Opp. JULIAN NEVILLE.
366 MR. & MRS. EMILY E. NEVILLE,
Pr. pro. GEO. W. BABCOCK.
MR. & MRS. ALICE A.,
Pr. pro. GEO. W. BABCOCK.
MARIE L. GASQUET,
Pr. pro. GEO. W. BABCOCK.
MARTHA V. GASQUET,
Pr. pro. GEO. W. BABCOCK.
SAM'L H. TORREY,
Special Tutor Minor George Horatio Packwood.
WM. REED MILLS,
Special Tutor of Minor Francis Joseph Packwood.
JAMES E. ZUNTS.

And whereas, also, it has been further stipulated and agreed that the notes of Messrs. Blackmore and Oglesby which were deliverable by said James E. Zunts to Julian Neville, acting for T. J. Packwood, the executor of the estate, in lieu of and as a full payment of the credit installments due on the said purchase of said plantation and slaves, and as is stated at large in an agreement made before James Graham, late notary public in this city on the day of , eighteen hundred and sixty two, shall be returned to the said James E. Zunts
367 simultaneously with this act, and the confirmation of his title to the property purchased by him as aforesaid:

Now, therefore, for the purpose of carrying out fully, finally, and legally all the conditions and agreements contained in the said agreement of compromise, they, the said appearers in their said several capacities, do hereby consent and agree and bind themselves, their constituents, pupils, and their respective heirs, executors, and administrators to abide by the same, and this their act of partition of their interest in the succession of said Samuel Packwood in accordance with said agreement of compromise, the said James E. Zunts hereby consenting on his part to the provisions of said compromise so far as the same concerns him, and the confirmation to him of the title to said plantation and slaves.

And whereas since the sale and adjudication of said plantation and slaves to the said James E Zunts as before stated he, the said James E. Zunts, has agreed to sell and dispose of the same to Messrs. William Stackhouse and Heywood Stackhouse, and that the title thereto
368 should now be confirmed by said heirs direct to them the said William Stackhouse and Heywood Stackhouse:

Now, therefore, in confirmation and execution of said agreement of com-

promise they, the said heirs and representatives of the heirs of the succession of the said Samuel Packwood, deceased, in their several capacities and to the extent of their several interests moreover declared that for the consideration and on the terms and conditions hereinafter expressed they do by these presents grant, bargain, sell, convey, transfer, assign, and set over unto the said Messrs. William Stackhouse and Heywood Stackhouse, who are here also present accepting the same for themselves, their heirs and assigns, and acknowledging delivered and possession thereof the said Bellechasse plantation and slaves which is more fully described as follows, to wit:

That certain tract of land cultivated as a sugar plantation and known by the name of Bellechasse plantation, situate in the parish of Plaquemines in this State, on the right bank of the Mississippi River, at
369 about five and a half leagues from the city of New Orleans, and measuring fifty-seven and a half acres front on said river by forty arpents in depth, bounded on the upper side by lands of Rosette Poupont, free woman of color, and below by that of Juan Y. de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, ploughs, carts, and other moveables belonging or appertaining to said plantation, and together with the following described slaves, to wit:

(Names of slaves, &c., omitted by direction of counsel for appellants.)

The moveables and stock, consisting of sixty-five mules, forty head of cattle, thirty sheep, twelve corn carts, two ox carts, four four-wheeled wagons, three bagasse carts, and everything appertaining to the sugar-house.

The above-described plantation was acquired by said late Samuel Packwood, in the following manner: he acquired one undivided half of the same from J. P. Benjamin, by an act passed before Theo. Guyol, on the 12th April, 1853, and the other undivided half from Theodore
370 J. Packwood, by an act passed before T. E. Laresche, a notary public in this city, on the 8th April, 1854.

All of the said plantation, slaves and moveable property were transferred to and placed in the possession of James E. Zunts, at the time of the said adjudication to him on the said . And he has retained possession of them, and no guarantee or warranty is hereby given for said slaves or moveable property, and said slaves being mentioned simply as a description of the property originally purchased by said Zunts, and not for the purpose of conveying same by this act.

This ratification and confirmation of said sale is hereby made and accepted pursuant to the terms and conditions of said agreement of compromise and in fulfilment of which the said Messrs. William Stackhouse and Heywood Stackhouse have at the execution hereof paid into the hands of the undersigned notary: First, the sum of fifty thousand dollars ($50,000) in cash. Second, the sum of two thousand five hundred dollars ($2,500), being the amount agreed to be paid by
371 them and said Zunts, towards the counsel fees; and third, the said William Stackhouse and Heywood Stackhouse have hereby furnished seventeen certain promissory notes, all drawn by them to the order of and endorsed by the said James E. Zunts, dated the 13th January, eighteen hundred and sixty-five, made payable at the banking house of Judson & Co., New Orleans, on the first day of March (1865), eighteen hundred and sixty-five, bearing interest at the rate of eight per cent. per annum from the first day of March, eighteen hundred and sixty-four, and for the following sums, to wit:

One for the sum of four thousand five hundred and thirty-seven $\frac{}{100}$ dollars.
One for the sum of four thousand five hundred and thirty-seven $\frac{50}{100}$ dollars.
One for the sum of four thousand five hundred and thirty-seven $\frac{50}{100}$ dollars.
One for the sum of two thousand two hundred and sixty-eight $\frac{77}{100}$ dollars.
One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
372 One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
One for the sum of four hundred and fifty-three $\frac{76}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for nine hundred and seven $\frac{51}{100}$ dollars.
One for four thousand five hundred and thirty-seven $\frac{55}{100}$ dollars.
One for four thousand five hundred and thirty-seven $\frac{55}{100}$ dollars.
One for eighteen thousand two hundred and thirty-seven $\frac{13}{100}$ dollars.
One for four hundred and fifty-three $\frac{75}{100}$ dollars.
Said seventeen certain promissory notes amounting together to the sum of fifty thousand dollars, and which notes, after being par-
373 aphed "ne varietur" by me, notary, to identify them with this act, were deposited with me for the purposes of this partition as hereinafter expressed.

And for the purpose of securing the punctual payment of all of said seventeen promissory notes at maturity, as well as of all interest that may accrue thereon, the said Messrs. William Stackhouse and Haywood Stackhouse moreover declare that they do by these presents specially mortgage, affect, and hypothecate the property hereinbefore described in favor of the said heirs, and of each of them, and of every other future holder or holders of said notes, or any of them, promising and binding themselves not to alienate, deteriorate, or encumber the said plantation to the prejudice of this mortgage, and moreover hereby consent and acknowledge that the special mortgage, with privilege and vendor's lien on said plantation, which existed under and by virtue of the sale and adjudication of the same to the said James E. Zunts, still exists and shall not be considered as novated, extinguished, or in any way impaired to the amount of the said seventeen promissory notes herein given
374 in principal and interest, and such mortgage with vendor's lien and privilege shall subsist and continue upon said plantation until all of said notes are fully and finally paid.

And here the said Theodore J. Packwood, testamentary executor of the said Samuel Packwood, deceased, placed in the hands of the undersigned notary the sum of forty-five thousand nine hundred and eighty-three dollars and forty cents ($45,983.40), of note of the Bank of Louisiana, which he withdrew from said bank in accordance with said agreement of compromise for the purposes of this partition.

The said sum of fifty thousand dollars paid in cash and the notes for fifty thousand dollars given by Messrs. Stackhouse, and the forty-five thousand nine hundred and eighty-three $\frac{40}{100}$ dollars added to the sum of fifty eight thousand two hundred and forty-four $\frac{04}{100}$ dollars already received by said heirs, amount to the sum of two hundred and four thousand two hundred and twenty-seven dollars and forty cents
375 ($204,227.40) to be partitioned among said heirs.

Whereupon I, the said notary, in pursuance of the provisions contained in said agreement of compromise, proceeded to make of said sum of two hundred and four thousand two hundred and twenty-seven $\frac{64}{100}$ dollars among the said heirs, on the basis of said schedule A referred to in said agreement of compromise, and in the manner following, to wit:

The said heirs and representatives of heirs of said Samuel Packwood hereby acknowledge to have received their respective shares in the amounts and kinds following, to wit:

The said Theodore J. Packwood's share being.....		$18,533 85
He received as follows:		
In cash.....	626 84	
In mortgage notes	4,537 55	
In notes of Bank of La	4,173 04	
He received under the former partition	9,196 41	
		$18,533 85
Geo. S. Lacey, attorney of Mrs. D. B. Morry, sole heir of the estate of Thomas W. Packwood, being entitled to..		$18,533 85
Received as follows:		
376 In cash	626 84	
In mortgage notes	4,537 55	
In notes of Bank of La.....	4,173 05	
Rec'd by said estate under former petition.. .	9,196 41	
		$18,533 85
H. T. Lonsdale, attorney of Mistress M. A. Morton, being entitled to receive.....		$18,533 85
Received as follows:		
In cash	626 84	
In mortgage notes	4,537 55	
In notes of B'k of La.....	4,173 05	
Rec'd by said Mrs. Morton in former partition.	9,196 42	
		$18,533 85
Mrs. Frances H. Neville being entitled to receive		
Received as follows:		
In cash	313 43	
In mortgage notes	2,268 77	
In notes of B'k of La.....	2,086 52	
Rec'd by said Mrs. Neville in former partition.	4,598 20½	
		$9,266 92½
Mistress Emily E. Gasquet being entitled to receive		1,853 38½
Received as follows:		
In cash	62 68	
In mortgage notes	453 76	
377 Received by said Mrs. Gasquet under former partition	919 64½	
		$1,853 38½
Miss Alice A. Gasquet being entitled to receive.....		$1,853 38½

She received as follows:

In cash	62 68	
In mortgage notes	453 76	
In notes of B'k of La	417 30	
Received under former partition	919 64½	
		$1,853 38½

Miss Mary L. Gasquet being entitled to receive $1,853 38½

She received as follows:

In cash	62 68	
In mortgage notes	453 76	
In notes of B'k of La	417 30	
Rec'd under former partition	919 64½	
		$1,853 38½

Miss Martha V. Gasquet being entitled to receive $1,853 38½

She received as follows:

In cash	62 68	
In mortgage notes	453 76	
In notes of B'k of La	417 30	
Rec'd under former partition	919 64½	
		$1,853 38½

378 Miss Frances E. Gasquet being entitle to receive... $1,853 38½

She received as follows:

In cash	62 68	
In mortgages notes	453 76	
In notes of B'k of La	417 30	
Rec'd under former partition	919 64½	
		$1,853 38½

Samuel T. Dorsey being entitle to receive $3,706 77

He received as follows:

In cash	125 37	
In mortgage notes	907 51	
In notes of B'k of La	834 60	
Rec'd under former partition	1,839 29	
		$3,706 77

John C. Dorsey being entitled to receive 3,706 77

He received as follows:

In cash	125 37	
In mortgage notes	907 51	
In notes of B'k of La	834 60	
Rec'd under former partition	1,839 29	
		3,706 77

Mrs. Susan B. Miller, represented by Hugh B. Eggleston, being entitled to receive 3,706 77

379 She received as follows:

In cash	125 37	
In mortgage notes	907 51	
In notes of B'k of La	834 60	
Rec'd under former partition	1,839 29	
		3,706 77

The heirs of Mrs. Julia M. McKin, represented by their special tutors, being entitled to receive 3,706 77

Received as follows:

In cash	125 37	
In mortgage notes	907 51	
In notes of the B'k of La	834 60	
Rec'd under former partition	1,839 29	
		$3,706 77

Alice W. Dorsey, represented by Greenbury Dorsey, being entitled to receive 3,706 77

She received as follows:

In cash	125 37	
In mortgage notes	907 51	
In notes of B'k of La	834 60	
Rec'd under former partition	1,839 29	
		3,706 77

George Horatio Packwood, represented by Samuel H. Torrey, special tutor, being entitled to receive 18,533 85

380 He received as follows:

In cash	3,692 30	
In mortgage notes	4,537 55	
In notes of Bank of La	4,173 05	
Rec'd under former partition	6,130 95	
		18,533 85

Francis Joseph Packwood being entitled to receive 18,533 85

In cash	3,692 30	
In mortgage note	4,597 55	
In notes of Bank of La	4,173 05	
Rec'd under former partition	6,130 95	
		18,533 85

Mrs. Mary A. C. Packwood being entitle to receive 74,490 45

She received as follows:

In cash	39,481 20	
In mortgage notes	18,237 13	
In notes of B'k of La	16,772 12	
Rec'd under former partition		
		74,490 45

And whereas the said succession of the said Samuel Packwood, deceased, is justly and truly indebted unto the succession of the said Thomas W. Packwood in the sum of eleven thousand eight hun-

381 dred and fifty dollars forty-four cents ($11,858.44), as set forth in said agreement of compromise, and in which is also stated and agreed upon that said sum shall be paid by said heirs to the heir of the succession of the said Thomas W. Packwood, deceased, to wit, to the said Mrs. D. B. Morry, represented by George S. Lacey, her attorney in fact, and by each of said heirs, in the amounts and proportions as set forth in said Schedule A, hereto annexed.

Whereupon I, the said notary, received the execution hereof from the said respective heirs and representatives of heirs to liquidate and pay off said debt of eleven thousand eight hundred and fifty-eight $\frac{44}{100}$ dollars the following sums, to wit:

From Theodore J. Packwood	847	$03\frac{3}{4}$
" Estate of Thomas W. Packwood	847	$03\frac{3}{4}$
" Mrs. M. A. Morton	847	$03\frac{3}{4}$
" Mrs. F. H. Neville	423	$52\frac{10}{14}$
" Mrs. Alice A. Zerega	84	$70\frac{1}{5}$
" Miss Mary L. Gasquet	84	$70\frac{1}{5}$
" Miss Martha V. Gasquet	84	$70\frac{1}{5}$
" Miss Francis Gasquet	84	$70\frac{1}{5}$
" Samuel P. Dorsey	169	$40\frac{2}{5}$
From John C. Dorsey	169	$40\frac{2}{5}$
382 " Mrs. Susan B. Miller	169	$40\frac{2}{5}$
" Mrs. Julia N. McKin heirs	169	$40\frac{2}{5}$
" Mrs. Emily E. Neville	84	$70\frac{1}{5}$
" Miss Alice W. Dorsey	169	$40\frac{2}{5}$
" George W. Packwood	847	$03\frac{2}{14}$
" Francis J. Packwood	847	$03\frac{2}{14}$
" Mary A. C. Packwood	5,929	22
Total	$11,858	44

Which said sum of eleven thousand eight hundred and fifty-eight $\frac{44}{100}$ dollars I, the said notary, paid over to the said George S. Lacey, the attorney in fact of Mrs. D. B. Morry, sole heir of the succession of Thomas W. Packwood, the receipt and payment of which he hereby acknowledges, and in his said capacity grants the said succession of said Samuel Packwood a full acquittance and discharge therefor.

It was further stipulated and agreed by the said agreement of compromise that the costs of this act and other incidental expenses, including costs of court, &c., should be borne and paid by said heirs in proportion to the amount of the total distributive share of each
383 heir, in pursuance of which I, the said notary, have deducted from the shares of each of said heirs a proportionate amount to pay and satisfy the expenses of this partition, costs of court, and stamps duty, recording and registering, &c.

It is also further understood and agreed upon by and between the said heirs and representatives of heirs that the sum of twenty-five hundred dollars is to be deducted in a rateable proportion from each of said heirs, and to be paid over, together with said other sum of twenty-five hundred dollars paid by said Messrs. Stackhouse as aforesaid, as counsel fees in the said suit of Packwood Ex'r, vs. Zunts.

And, now, it is moreover understood, by and between all parties hereto, that in case any of said heirs or representatives of heirs hereinbefore named should not sign this present act, that notwithstanding this present act shall be final and binding on all of the said parties present or

represented who will sign the same and to the full extent of the interests represented by him, her, or them.

Thus done and passed in my office, in New Orleans aforesaid,
384 in the presence of Messrs. William Cameron and Joseph Hooper, competent witnesses, of this city, who hereunto sign their names together, with said parties appearers and me, notary, on the day and date set forth in the caption hereof.

(Original signed) WM. REED MILLS,
Tutor of Francis Joseph Packwood.
T. J. PACKWOOD, *Ex'or.*
M. A. C. PACKWOOD.
T. J. PACKWOOD.
T. J. PACKWOOD,
Pr. pro S. T. DORSEY.
SAML. H. TORREY,
Special Tutor for Geo. Horatio Packwood.
GEO. S. LACEY,
Agt. and Atty. in Fact and at Law for Catharine Morry.
ROBERT SWAIN,
Special Tutor for Morton McKim.
H. B. EGGLESTON,
Attorney for Mrs. Susan B. Miller.
E. W. HUNTINGTON,
Special Tutor for Dorsey McKim.
E. T. FELLOWES,
Special Tutor for Samuel McKim.
B. L. LYNCH,
Special Tutor for Lizzie W. McKim.
MRS. & MR. EMILE E. NEVILLE,
Pr. pro GEO. W. BABCOCK.
385 MRS. & MR. ALICE A. ZEREGA,
Pr. pro. GEO. W. BABCOCK.
MARIE L. GASQUET,
Pr. pro. GEO. W. BABCOCK.
MARTHA V. GASQUET,
Pr. pro. GEO. W. BABCOCK.
GEO. W. BABCOCK,
Tutor of the minor Francis E. Gasquet.
MARY ANN MORTON,
Pr. pro. H'Y T. LONSDALE.
FRANCIS H. NEVILLE.
JULIAN NEVILLE.
JAMES E. ZUNTS.
WM. STACKHOUSE.
H. STACKHOUSE.
G. DORSEY,
Att'y for the Guardian of the Heirs of J. N. McKim.
G. DORSEY,
For A. W. Dorsey & John C. Dorsey.
WM. CAMERON.
JOSEPH HOOPER.

HUGH MADDEN, *Not. Pub.*

A true copy.
(Signed) HUGH MADDEN,
Not. Pub.

Document B annexed to petition injunction.—Filed Dec'r 20th, 1867.

386 W. & H. STACKHOUSE *vs.* JAMES E. ZUNTS. } No. 18850.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this 15th (fifteenth) day of February, in the year of our Lord one thousand eight hundred and sixty-five, before me, Hugh Madden, a notary public in and for the parish and city of New Orleans, State of Louisiana aforesaid, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared William Stackhouse and Heywood Stackhouse, both of the parish of Plaquemines, in this State, who declared that they are now justly indebted unto James E. Zunts, of this city, in the full sum of fifty thousand dollars ($50,000) and interest, as evidence of which they, the said William Stackhouse and Heywood Stackhouse, have hereby furnished two certain promissory notes drawn by them, to the order of and endorsed by themselves, dated the first day
387 of February, eighteen hundred and sixty-four, and made payable at the office of Judson & Co., in this city, each for the sum of twenty-five thousand dollars, on the first day of February, eighteen hundred and sixty-six, bearing interest from date until maturity at the rate of six per cent. per annum, and from and until maturity until final payment at the rate of eight per cent. per annum, which said notes, after being paraphed "ne varietur" by me, notary, in order to identify them with this act, were delivered to the said James E. Zunts, who hereby acknowledges the receipt thereof.

Now, therefore, in order to secure the punctual payment of said promissory notes at maturity, as well as of all interest that may accrue thereon, the said Messrs. William Stackhouse and Heywood Stackhouse moreover declared that they do by these presents specially mortgage, affect, and hypothecate in favor of the said James E. Zunts, his heirs and assigns, and without further subrogation to enure to the use and benefit of any and all future holder or holders of the said prom-
388 issory notes, the following-described property, to wit:

That certain tract of land cultivated as a sugar plantation, and known by the name of Bellechasse plantation, situate in the parish of Plaquemines, in this State, on the right bank of the Mississippi River at about five and a half leagues from the city of New Orleans, and measuring fifty-seven and a half acres front on said river, by forty arpents in depth, bounded on the upper side by the lands of Rosette Poupont and below by that of Juan Y. de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, ploughs, carts, and all other movables belonging and appertaining, as the same were purchased by said Messrs. William Stackhouse and Heywood Stackhouse from the heirs of Samuel Packwood by an act passed before the undersigned notary on the 13th January, 1865.

And here the said William Stackhouse and Heywood Stackhouse promise and bind themselves not to alienate, deteriorate, or en-
389 cumber the property herein described to the prejudice of this mortgage, which is hereby accepted by the said James E. Zunts to this effect, also present.

The said James E. Zunts furthermore declares that he dispenses with he renunciations of the wives of said William Stackhouse and Hey-

wood Stackhouse to this act, also with a certificate from the recorder of said parish of Plaquemines to show the encumbrances, if any exist, in the names of said Stackhouse, as is required otherwise by article three thousand three hundred and twenty-eight of the civil code of this State.

United States internal revenue stamps for fifty dollars have been affixed hereto, duly defaced at the execution hereof.

Thus done and passed, in my office in New Orleans aforesaid, in the presence of Messrs. Joseph Hooper and James Gerrard, competent witnesses, of this city, who hereunto sign their names as such, together with said parties and me notary, on the day and date set forth in the caption hereof.

(Original signed)

W. STACKHOUSE.
H. STACKHOUSE.
JAMES E. ZUNTS.
JOSEPH HOOPER.
JAMES GERRARD.

HUGH MADDEN,
Not. Pub.

390 A true copy.
(Signed) HUGH MADDEN,
Not. Pub.

STATE OF LOUISIANA,
Parish of Plaquemines:

I, the undersigned recorder, do hereby certify that the above and foregoing mortgage has this day been duly recorded in my office in book C of conventional mortgages, under No. 1322, page 225.

Given under my hand and seal, at the parish of Plaquemines, this 18th day of October, 1865.

(Signed) S. MARTIN,
Recorder.

Writ of injunction.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

THE STATE OF LOUISIANA,
Parish of Plaquemines:

Second judicial district court.

To Victor Réaud, sheriff, &c.; to James E. Zunts, New Orleans:

391 Whereas William Stackhouse, one of the defendants in the above-entitled case, has this day applied to this honorable court for a writ of injunction herein, and whereas the formalities required by law have been by them fulfilled:

These are therefore to enjoin you from proceeding any further with the writ of seizure and sale issued in the above-entitled suit against said defendants, Wm. & H. Stackhouse, until otherwise directed by due course of law.

Witness the honorable A. Cazabat, judge of the said court, parish of Plaquemines, this 17th day of February, A. D. 1867.

(Signed) ARMAND LARTIGUE, *Clerk.*

Service accepted.
(Signed) JAMES E. ZUNTS.

Answer to petition of injunction.—Filed March 21st, 1867.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Second judicial district court of the State of Louisiana, in and for the parish of Plaquemines.

The defendant denies all and singular the allegations in the petition, except so far as they may be hereinafter admitted.

392 He admits that he obtained the order of seizure and sale, the execution of which has been enjoined in this suit, and admits that he entered into the contracts set forth in the copies of the notarial acts marked "A & B," filed with the petition. He denies that the declarations and statements in the authentic act made by the petitioners to him, the copy of which is marked "B," are in any respect untrue, and denies the allegation that they were made under any unlawful influence or for any purpose other than the just purpose of accompanying their acknowledgment of the debt with and securing its payment by the act before the notary importing a confession of judgment.

He denies the allegation of the petitioners that the notes were given and the mortgage granted without any consideration whatever, and that the petitioners were not then and are not now indebted to said Zunts in any manner, and he denies the further allegation that "they had never had any other transaction with him except the purchase of the plantation, &c.," and never owed him any debt except one hundred

393 thousand dollars, which has been paid. He alleges that allegations are absolutely false, and were knowingly, wilfully, and corruptly made and sworn to by the petitioners for the fraudulent and corrupt purpose of obtaining an injunction in this case, which could not have been obtained without such false, corrupt, and fraudulent allegations and oath.

He alleges that they have had divers large transactions with other than the purchase of the plantation and its appurtenances, and have paid to him large sums of money not mentioned by them in their petition, which he is prepared to prove on the trial of this suit, and that the false allegations and oath in respect to other debts than those mentioned in document "A" were wilfully and corruptly made for the purpose of giving plausibility to the false allegations and oath respecting the notes and mortgage set forth in Document B.

The defendant, further answering, says that by reason of the wrongful suing out of the injunction in this case by the petitioners he has suffered great damages, which he is entitled by a statute of this State to recover, and also special damages for a fee for the professional

394 services of counsel in this suit, which are well worth the sum of twenty five hundred dollars.

Wherefore he prays, the premises being considered, that the injunction may be dissolved at plaintiffs' costs, and that they be condemned jointly and severally, and their surety or sureties on the injunction bond in solido with them according to law, to pay him the highest amount of damages allowed by the statute, and the highest rate of conventional interest, and to pay him the further sum of twenty-five hundred dollars as special damages for his counsel fee, and he prays for all such general relief as the nature of the case may require.

(Signed) RANDELL HUNT,
For Pet'r.

Supplemental petition.—Filed April 23d, 1867.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Second judicial district court of the State of Louisiana, sitting in the parish of Plaquemines.

The supplemental petition of William Stackhouse and Haywood
395 Stackhouse, residing in the parish of Plaquemines, respectfully represents:

That when they alleged in their original petition that they never had any other transaction with Zunts, the defendant, than the purchase of the plantation, they meant to say any transaction that could be the basis or foundation of the notes of twenty-five thousand dollars each, on which the order of seizure and sale was issued, and that they were not indebted to said Zunts in any sum whatever; that in drawing up the original petition their attorneys did not express this allegation in as clear language as should have been done. For this reason your petitioners now beg leave to amend their original petition in this particular.

And your petitioners further represent that, inasmuch as said Zunts has falsely and maliciously aspersed their character in his answer to said petition, and raised an issue involving their reputation for truth and honesty, they desire to have this case tried by a jury.

Wherefore your petitioners pray that they may have leave to file this their supplemental petition, and that the case be tried by a jury, and that judgment be rendered as prayed for in their original petition,
396 reserving to them their action of damages for the slander and defamation set forth in the answer of said Zunts, and that said Zunts be cited to appear and answer this petition, and they pray for general relief; and as in duty bound, &c., &c.

(Signed) ROSELIUS & PHILIPS, *Att'ys.*

Affidavit waived May 20th, 1867.
(Signed) RANDELL HUNT.

Order.

Let this supplemental petition be filed according to law, and as prayed for let citation issue to defendant.

Carrollton, Louisiana, April 20th, 1867.
(Signed) A. CAZABAT,
Judge 2d Dist. La.

Citation.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

THE STATE OF LOUISIANA,
Parish of Plaquemines:

Second judicial district court.

APRIL 23D, 1867.

JAMES E. ZUNTS, Esq'r,
Parish of Orleans:

You are hereby summoned to comply with the demand contained
397 in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the second

judicial district court of the parish of Plaquemines ten days after the service hereof.

By order of the court:

Witness the honorable A. Cazabat, judge.

Parish of Plaquemines, April 23d, 1867.

(Signed) ARMAND LARTIGUE, *Clerk.*

Sheriff's return.

Service accepted.

(Signed) JAMES E. ZUNTS.

Writ of subpœna.

W. & H. STACKHOUSE *vs.* JAMES E. ZUNTS. } No. 18850.

THE STATE OF LOUISIANA,
Parish of Plaquemines:

Second judicial district court.

APRIL 23D, 1867.

To V. Réaud, esq., sheriff of the parish of Plaquemines, greeting:

You are hereby commanded, in the name of the State of Louisiana, and of the second judicial district court in and for the parish of
398 Plaquemines, to serve the within subpœnas on the hereinafter-named witnesses, to wit:

Effingham Lawrence, served personally.
Cornelius Lawrence, absent from the State and gone to New York.
Dr. J. B. Wilkinson, served personally.
L. W. Bouligny " "
J. P. Waters " "
Henry Schexnaydre " "
Sophia Hogan " "

And how you shall have executed this writ make due return with your doings thereon in our said court on or before the 20th day of May, A. D. 1897, at 10 o'clock a. m.

Witness the Honorable A. Cazabat, judge.

Parish of Plaquemines, April 23d, 1867.

(Signed) ARMAND LARTIGUE, *Clerk.*

Sheriff's return.

Subpœna received for Cornelius Lawrence on the 23d of April, 1867, and on the 4th of May same year served said subpœna on E. Lawrence, who then informed me that the said Cornelius Lawrence had left the State and gone to New York.

Parish of Plaquemines, May 20th, 1867.

(Signed) V. RÉAUD, *Sheriff.*

399 *Peremptory exception.—Filed October 21st, 1867.*

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Second judicial district court, parish of Plaquemines.

To the honorable the judge of the second judicial district court, holding sessions in and for the parish of Plaquemines and State of Louisiana.

And now comes James E. Zunts, the defendant in injunction in the above entitled cause, and excepts to plaintiffs' petition on the ground that the same sets forth no cause of action.

Wherefore defendant in injunction prays that this his peremptory exception be sustained and plaintiffs' suit be dismissed with costs, and for all equitable and general relief in the premises.

(Signed) L. MADISON DAY, *Att'y.*

Order exception overruled October 26th, 1867.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

400 The peremptory exception duly fixed for trial came up this day, and after hearing argument of counsel, the court, for reasons orally assigned in open court, overruled said exception, it appearing that the petition of plaintiffs in injunction discloses a sufficient cause of action. L. Madison Day of counsel for J. E. Zuntz; A. Phillips of counsel for W. & H. Stackhouse.

Supplemental petition.—Filed November 15th, 1867.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Second judicial dist. court of the State of Louisiana.

To the honorable 2d judicial district court of the State of Louisiana, sitting in the parish of Plaquemines.

The petition of James E. Zunts, of the city of New Orleans, respectfully sheweth:

That he instituted this suit in this court, No. 906, against William Stackhouse and Haywood Stackhouse on two promissory notes, each for twenty-five thousand dollars ($25,000.00), payable on the first of
401 February, 1866, secured by the mortgage of a tract of land named Bellechasse, in the parish of Plaquemines, and applied for and obtained an order of seizure and sale to enforce the payment of said notes, and that the sheriff proceeded to give notice and to seize under said order.

That the said William and Haywood Stackhouse, the defendants, thereupon sued out and obtained from this court a writ of injunction to restrain your petitioner and the sheriff of the parish of Plaquemines from

proceeding further with the execution of the order of seizure and sale until the further order of the court upon their furnishing bond and surety in the sum of seven thousand dollars ($7,000.00) conditioned according to law; and that the sheriff has returned to the court the writ and notice of seizure, &c., and proceeded no further in this case under the seizure; all which will appear at large by reference to the record No. 906 in this court prayed to be considered as forming a part of this petition.

That since the institution of said suit and of the said injunction, the said William and Haywood Stackhouse, the defendants, have
402 raised a large crop of sugar cane and manufactured and are continuing to manufacture sugar, molasses, &c., out of the said cane so raised during that period upon the plantation and property thus mortgaged, and have sent and continue to send from said plantation the crops sugar, molasses and other produce above referred to for sale in this city, and are daily diminishing the value of the property and its proceeds, the security and mortgage which they have given to secure the said notes.

That your petitioner will be deprived of his legal rights and security under the mortgage hereinbefore referred to unless this court shall issue a new order to the sheriff of the parish of Plaquemines to seize and hold in his possession the sugar, molasses and all the proceeds and crops of the above plantation (a portion of which still adheres to and has never been severed from the land) until the payment of the said notes with the interest that may be due thereon, or until the final settlement of this suit. That the security heretofore furnished by the defendants on their injunction bond is insufficient to secure the payment of the said notes or even the interest now due thereon.

403 Wherefore your petitioner prays that a new order or writ be issued to the sheriff of the parish of Plaquemines, commanding him to seize and keep possession of the proceeds and crops of the said plantation Bellchasse until the final settlement of this case.

(Signed) L. MADISON DAY, *Att'y.*
(Signed) JAMES E. ZUNTS.

Sworn to and subscribed before me this 14th November, 1857.
(Signed) PAUL W. COLLENS,
Third Justice.

Order.

Let an alias writ of seizure and sale issue, as within prayed for, by the clerk, and let the sheriff proceed to reseize as within prayed for.
November 14th, 1867.
(Signed) R. KING CUTLER, *Judge.*

Petition for appeal.—Filed November 19th, 1867.

W. & H. STACKHOUSE
vs. } No. 18850.
JAMES E. ZUNTS.

Second judicial dist. court of Louisiana, parish of Plaquemines.

404 To the honorable the second judicial district court of the State of Louisiana, sitting in the parish of Plaquemines.

The petition of William Stackhouse and Haywood Stackhouse, residing in the parish of Plaquemines, respectfully represents:

That an alias order of seizure and sale has been applied for and issued in the case of James E. Zunts vs. William Stackhouse and Haywood Stackhouse, now pending in this honorable court; that the sheriff of the

parish of Plaquemines has notified your petitioners of said alias order of seizure and sale and is about to execute the same; that your petitioners have been advised and believe that there is error in the granting of said alias order of seizure and sale, and desire to take a suspensive appeal therefrom to the honorable the supreme court.

Wherefore your petitioners respectfully pray that a suspensive appeal may be granted to them from said alias order of seizure and sale on their giving bond and security in such sum and conditioned as the law directs;

And that said James E. Zunts may be cited to appear and answer
405 this said appeal, and that said appeal may be made returnable in the supreme court according to law.

And your petitioners pray for general relief; and as in duty bound, &c., &c.

(Signed) C. ROSELIUS & ALFRED PHILIPS.

Order.

Let, as within prayed for, a suspensive appeal be granted herein, upon the defendant giving bond with good and solvent security in the sum of twenty five thousand dollars ($25,000), said bond to be conditioned as the law directs, returnable in the supreme court of Louisiana on the 3d Monday in December, 1867.

November 18th, 1867.

(Signed) R. KING CUTLER, *Judge.*

Bond of appeal.—Filed November 19th, 1867.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Know all men by these presents that we, William Stackhouse and Heywood Stackhouse, as principals, and James P. Waters, as surety, are held and firmly bound unto James E. Zunts, his executors,
406 administrators, and assigns, in the sum of twenty-five thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated in the parish of Plaquemines on this 19th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above William Stackhouse and Heywood Stackhouse this day filed a petition of appeal from an alias order of seizure and sale, dated 14th November, 1867, in the suit of James E. Zunts vs. W. & H. Stackhouse, No. 906, in the second judicial district court of Louisiana, in and for the parish of Plaquemines:

Now the condition of the above obligation is such, that the above bound William Stackhouse and Heywood Stackhouse shall prosecute said appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal, otherwise that the said James P. Waters, surety, shall be liable
407 in their place.

(Signed) WM. STACKHOUSE.
" H. STACKHOUSE.
" J. P. WATERS.

Signed, sealed, and delivered in the presence of—
(Signed) ARMAND LARTIGUE.
" S. MARTIN.

Rule to set aside appeal.—Filed November 21st, 1867.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Second judicial district court in and for the parish of Plaquemines and State of Louisiana.

On motion of L. Madison Day and R. Hunt, of counsel for plaintiff in the above entitled cause, it is ordered that defendants, Wm. Stackhouse and Heywood Stackhouse, who have presented a petition and obtained an order for a suspensive appeal to the supreme court of the State from the order issued by the judge of this court on the day of November, 1867, directing the sheriff of the parish of Plaquemines to seize, sequester, and hold in his possession the crops and the
408 proceeds thereof subject to the further order of this court, that will more fully and at large appear on reference to the proceedings heretofore had in this case, that said Wm. Stackhouse and H. Stackhouse, defendants in said case, do show cause on Tuesday, the 26th instant, at No. 14 Chartres street, in New Orleans, at 4 o'k p. m., why the order of appeal should not be rescinded, on the grounds as follows:

1st. That it is an order from which no appeal is, under the law, applicable to the case allowable.

2d. That they made no effort by motion or otherwise to set aside the order from which they have obtained the order of appeal.

3d. That the security is insufficient in law, the surety not being a resident of the parish of Plaquemines.

4th. That the surety is not good and solvent as required by law.

5th. That the amount of the security required for the appeal is insufficient.

6th. For other reasons patent upon the record.

New Orleans, November 19th, 1867.

(Signed) R. KING CUTLER, *Judge.*

409 *Agreement and motion for a change of venue.—Filed November 29th, 1867.*

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS } No. 18850.

In the second judicial district court in and for the parish of Plaquemines.

JAMES E. ZUNTS
vs
WM. & H. STACKHOUSE. } No. 906.

WM. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. }

It is agreed that these cases are to be transferred on the original pleadings as they stood before the order for an alias order of seizure and sale was applied for and granted to the fifth district court of New

Orleans, and that all the papers in the case as above stated be taken from the second judicial district court in the clerk's office of the parish of Plaquemines, and filed in the said fifth district court of New Orleans, and put upon the court docket for trial as if the case had been instituted in that court; all testimony taken in the case shall be used and may be objected to in the same manner as if the case had been tried
410 in the parish of Plaquemines; the petition and order of an alias order of seizure and sale are to be dismissed, as well as the seizure made under it; and it is further agreed that Wm. & A. Stackhouse shall execute a bond in the sum of twenty-five thousand dollars, with Given, Brown & Co. as sureties, as additional security for the payment of the debt claimed by said Zunts, say fifty thousand dollars with interests and costs, in case a final judgment should be rendered in favor of said Zunts for the same; that is, if the injunction sued by said Wm. & H. Stackhouse should be dissolved and the defence set up by them should not be sustained; all costs to abide the final decision.

New Orleans, November 28th, 1867.

(Signed) ROSELIUS & PHILLIPS,
For Wm. & H. Stackhouse.

(Signed) RANDELL HUNT & L. MADISON DAY,
For James E. Zunts.

On motion of Roselius & Philips, of counsel for Wm. & H. Stackhouse in the foregoing cases, and with the consent of L. Madison Day and R. Hunt, esq'res, of counsel for James E. Zunts, it is ordered that these cases be transferred to the fifth district court of New Or-
411 leans, in pursuance to the agreement made between the parties, and that clerk of the second judicial district court, parish of Plaquemines, deliver the papers in the case accordingly.

It is further ordered that the sheriff release the property seized by him upon due execution of a security bond.

We consent to the above, including the portion added in last line.

N. O., Nov. 28th, 1867.

(Signed) RANDELL HUNT.
" L. MADISON DAY.
(Signed) R. KING CUTLER.

Bond.—November 28th, 1867.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Be it known by these presents that we, William and Haywood Stackhouse as principals, and Given, Brown & Co., as sureties, are bound to James E. Zunts in the sum of ($25,000) twenty-five thousand dollars, on the following conditions, that is to say:

If the defence set up by said William and H. Stackhouse to the claim of said Zunts in the injunction suit now pending in the second judicial district court in the parish of Plaquemines, but which is to be transferred
412 to the fifth district court of New Orleans, shall be sustained by the final judgment to be rendered in said injunction suit, then this bond and obligation are to be null and void, but if said defence to said claim set up in said junction suit should not be sustained, then this bond is to be in full force.

In faith of which we have signed these presents this 28th day of November, in the city of New Orleans.

(Signed) W. & H. STACKHOUSE.
(Signed) GIVEN, BROWN & CO.

Witnesses:
G. FERNANDEZ.
JAS. J. TARLETON.

Order case submitted.—Extract from minutes Nov'r 27th, 1868.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

This case, continued from Friday, 20th instant, came on again this day for argument, C. Roselius & Alf. Philips for plaintiffs, R. Hunt & L. M. Day for defendants; when, after hearing counsel, said
413 cause being submitted, the court the same under advisement.

Judgment.—Extract from minutes.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

In this case the court having duly considered, and being of opinion that the law and evidence are in favor of defendant, it is ordered, adjudged and decreed that the injunction herein issued be dissolved at plaintiffs' cost, and that said defendant, James E. Zunts, do have and recover of plaintiffs, William and Heywood Stackhouse, in solido, twelve per cent. damages on the amount of the judgment herein enjoined, together with eight per cent. interest as allowed in the order of seizure and sale, and that the claim for lawyers' fees be dismissed as in case of non-suit.

Judgment rendered November 28th, 1868.
Judgment signed December 3d, 1868.

(Signed) CHAS LÉAUMONT,
Judge.

Motion for appeal.—Filed December 7th, 1868.

414 W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Fifth district court.

On motion of C. Roselius and Alfred Philips, of counsel for plaintiffs, and on suggesting to the court that said plaintiffs have been informed and believe there is error to their prejudice in the final judgment rendered herein on the 28th day of November, 1868, against said plaintiffs and in favor of said defendant, and that they are desirous of appealing suspensively from the same to the supreme court of Louisiana, it is ordered that a suspensive appeal be accorded to said plaintiffs and appearers to said final judgment to the supreme court of La. upon their furnishing bond and security conditioned as the law directs, said appeal to be returnable in the supreme court on the fourth Monday of January, 1869.

Bond.—Filed Dec'r 7th, 1868.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

415 Know all men by these presents that we, William Stackhouse and Heywood Stackhouse, as principals, and James Byrnes, as surety, are held and firmly bound unto the clerk of the fifth district court for the parish of Orleans et al., successors in office, &c., executors, administrators, and assigns, in the sum of twenty-five thousand ($25,000) dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans on this 7th day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above bounden William Stackhouse and Heywood Stackhouse this day filed a petition of appeal from a final judgment rendered against them in the suit of W. & H. Stackhouse vs. James E. Zunts, No. 18850, in the fifth district court for the parish of Orleans on the 28th day of November, 1868.

Now the condition of the above obligation is such that the above bound William Stackhouse and Heywood Stackhouse shall prose-
416 cute said appeal and shall satisfy whatever judgment may be rendered against them or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal, otherwise that the said James Byrnes, surety, shall be liable in their place.

(Signed) WM. STACKHOUSE. [SEAL.]
" H. STACKHOUSE. [SEAL.]
" JAMES BYRNES. [SEAL.]

Signed, sealed, and delivered in presence of—
F. N. LUMINAIS.

Decree of supreme court for the State of Louisiana.—Filed Oct. 18th, 1871.

W. &. H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 2020.

Appeal from the fifth district court for the Parish of Orleans.

On rehearing.

SUPREME COURT OF THE STATE OF LOUISIANA, CLERK'S OFFICE,
New Orleans, May 27th, 1871.

Mr. Chief Justice LUDELING delivered the opinion of the court in the words and figures following, to wit:

On the trial of this case, the plaintiffs having offered parole
417 evidence to establish that the consideration of the notes sued on was the sale of persons, the defendant likewise offered witnesses to prove that the sale of slaves was not the consideration, but that these notes formed a part of the price of a plantation in accordance with an agreement made a considerable time before the sale of the Bellechasse plantation by the heirs of Packwood and defendant to plaintiffs. This

was objected to on the ground that it was an attempt to contradict the notarial act of sale by the heirs of Packwood and Zunts to the plaintiffs.

In our former opinion we held that the objection was well taken; but, on more mature consideration, we are not satisfied with that ruling. The subject-matter of that notarial act is not under consideration in this suit. The object of this suit is not to enforce any right growing out of the contract evidence by that notarial act, and therefore the object of the testimony offered is not to aid in the interpretation of the act. It is a general rule that parole contemporaneous evidence is admissible to
contradict or vary the terms of a valid written instrument, and
418 the reason of the rule is to prevent the substitution of a new and different contract for the one which was really agreed upon and reduced to writing.

It is evident that the reason of the rule does not apply in the case in hand. There is no contest in relation to the contract, evidenced by the notarial act itself was only introduced to prove the declaration of Zunts relative to the price stated in that act of sale.

All considerations of evidence must be pursued with reference to the subject-matter to which it is to be applied; and to weigh the competency or suffi'cy of evidence in any case, it is requisite to discern with accuracy the nature of the proposition it is offered to establish. (Evans Pothier Evidence, No. 16, Rec. 11, p'ge 216.)

We are of opinion that the notarial act by Zunts and the Packwood heirs, that the price was one hundred thousand dollars cash, does note estop Zunts from shewing that the notes sued on form a part of the price of the plantation, when it attempted to prove that the consideration of the notes was slaves. Otherwise truth might be
419 suppressed. The evidence in the record is conflicting. We believe that the ends of justice will be better subserved by remanding the case for a new trial.

It is, therefore, ordered and adjudged that our former decree be set aside, that the judgment of the district court be annulled, and that this case be remanded to the court a qua, to be tried de novo; and that the appellee pay costs of appeal.

A true copy.
[SEAL.] M. T. JULIAN, *D'y Clerk.*

Continuance.

W. & H. STACKHOUSE
vs. } No. 18850.
JAMES E. ZUNTZ.

WEDNESDAY, *Nov 22d*, 1871.

Present, the honorable H. C. Dibble, judge of the 8th district court for the parish of Orleans, acting for the Hon. Chas. Leaumont, judge of said court, absent.

This cause is continued by preference.

Extract from minutes of Nov. 22, 1871.

420 *Interrogatories to be served upon the plaintiffs.—Filed Nov'r 23d, 1871.*

WM. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 18859.

Fifth district court for the parish of Orleans.

Interrogatories to be propounded to and answered under oath by John Larkin, a witness on behalf of the defendant in the above entitled and numbered suit, said witness being a domiciled resident of the parish of Lafourche, in the State of Louisiana.

Interrogatory 1st. What is your age, place of residence, business, trade, occupation, and how long have you been engaged in the business, trade, or occupation which you now follow?

Interrogatory 2d. Are you acquainted with the parties of this suit; if so, how long have you known them, and had you any business relations with them or either of them; if so, what were these relations, and where?

Interrogatory 3. Who was the engineer on the Bellchasse plantation in 1863, till February, 1864, and was that the sole occupation of
421 the person so employed; if not, what other occupation had he?

Interrogatory No. 4. Had you ever any personal knowledge in regard to a sale of the Bellechasse plantation subsequent to March 1860, when Zuntz acquired that plantation from Packwood's estate? If you know of any sale state who sold and who bought, precisely what, and what was so sold, and for what price, and on what terms; state everything you may know about the said sale, and how you know what you may say in answer to this interrogatory.

Interrogatory No. 5. State precisely what was included in the sale; what is solely the plantation alone, or did it embrace any other property whatever?

Interrogatory No. 6. Do you know of any other offers having been made to Zuntz for the purchase of Bellechasse plantation prior to the sale to the Messrs. Stackhouse; if so, who made these offers, and what prices were so offered?

Interrogatory No. 7. Do you know anything further in relation of any sale of the Bellechasse plantation in 1864 or of a sale of any negroes made by Zuntz to the Messrs. Stackhouse? If so, state everything you know.

For RANDALL HUNT, &c., &
422 JOHN H. ILSLEY,
Of Counsel for James E. Zunts.

Notice to cross-interrogatories.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 18850.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

NEW ORLEANS, *Nov.* 24, '71.

To Messrs. W. & H. Stackhouse, thro' Messrs. Roselius & Philips, att'ys for plaintiffs:

SIRS: Please to take notice to the accompanying interrogatories in the

above-entitled case, and cross the same within three days from the service hereof, otherwise a commission will issue without such cross-interrogatories.

By order of the court.

(Signed) PHILIP POWER, JR.,
D'y Clerk.

Return to above.

Received November 25th, 1871, and on the 27th day of November, 1871, I served a copy of the within notice to cross-interrogatories
423 on C. Roselius, esq., personally, of the firm of Roselius and Philips, attorneys at law.

Returned same day.

(Signed) J. A. GONDOLFI,
D'y Sheriff.

Cross-interrogatories.—Filed November 28th, 1871.

WM. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 18850.

The counsel for the plaintiffs object to any parol evidence in relation to the sale of the plantation and slaves referred to in the preceding interrogatories, and with this reservation and objection they propound the following cross-interrogatories:

1°. If you state that you know anything of the facts inquired of, please to state when, where, and in whose presence the information to which you testify was communicated to you.

2°. Where do you reside now, and where have you resided since 1864; in whose employ have you been during that time?

3°. When and where did you converse on the subject of your testimony, either with Mr. Zuntz or with any one else?

(Signed) C. ROSELIUS & ALF. PHILIPS,
For Plaintiffs.

424 *Motion for a commission to take testimony.—Filed Nov. 29th, 1871.*

WM. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 18850.

Fifth district court, parish of Orleans.

On motion of John H. Isley, of counsel for James E. Zuntz, the defendant in the above suit, and on suggesting that the testimony of John Larkin, residing in the parish of Lafourche, State of Louisiana, a witness on the part of said defendant, is material and important to his case, it is ordered that a commission do issue herein, directed to any judge, justice of the peace, or other competent officer, residing in and duly qualified for said parish of Lafourche, and that the said commission be made returnable and returned into this court on or before Tuesday the 5th day of December next, 1871.

Commission.

W. & H. STACKHOUSE
vs.
J. E. ZUNTZ. } No. 18850.

425 Fifth district court for the parish of Orleans.

The State of Louisiana to any justice of the peace, or judge or other person in the parish of Lafourche, State of Louisiana, duly qualified to administer oaths:

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority, diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant in a certain suit now pending in the fifth district court of New Orleans, wherein W. & H. Stackhouse are plaintiffs, and J. E. Zuntz defendant.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart upon their respective corporal oaths first taken before you upon the Holy Evangelists; that you reduce their examination to writing, and when you shall have so taken them, that you send the same with this commission closed up under your seal to us, in our fifth district court at the city of
426 New Orleans without delay on the 5th day of December, 1871.

Witness the honorable Charles Leaumont, judge of our said court, this 29th day of November, in the year of our Lord one thousand eight hundred and seventy-one, and the 96th year of the Independence of the United States.

(Signed) LOUIS POWER,
Clerk.

Continuance.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 18850.

WEDNESDAY, *December 6th*, 1871.

Present, honorable Paul E. Théard, judge of the 4th district court for the parish of Orleans acting for Judge Chas. Leaumont, absent.

This cause is continued by preference.

Extract from minutes Dec. 6th, 1871.

Bill of exception of defendant.—Filed January 4th, 1872.

WM. & H. STACKHOUSE
vs.
ZUNTZ, JAMES E. } No. 18850.

427 Fifth district court for the parish of Plaquemines.

Be it remembered, that on the 3d day of January, 1872, this case being on trial, Mrs. William Stackhouse, the wife of William Stackhouse, one of the plaintiffs, was produced to be sworn as a witness for and in behalf of Heywood Stackhouse, the other plaintiff in said suit.

Whereupon the defendant objected to Mrs. Wm. Stackhouse as a witness for Heywood Stackhouse, on the grounds:

1°. That the obligations being a joint one it must stand or fall as a joint one, and the testimony of the witness would be directly in favor of the husband, for whom she could not legally testify.

2°. That the whole of the joint debt evidenced by the two notes now in litigation, is secured by special mortgage on the Bellechasse plantation, and jointly by the mortgagors William Stackhouse and Haywood Stackhouse, which said mortgage is indivisible and affects all and every part of said property mortgaged, and that, if by the testimony
428 of Mrs. Wm. Stackhouse, Heywood Stackhouse was released from his portion of the debt evidenced by the notes, it would necessarily relieve the undivided half of William Stackhouse of said plantation, from one-half of the debt; i. e., that is the half due by Heywood Stackhouse.

But the court deeming Mrs. Wm. Stackhouse a competent witness for Heywood Stackhouse (her testimony to restricted by the court exclusively to him), permitted the said witness to be sworn and examined on behalf of Heywood Stackhouse.

Whereupon the defendant, by his counsel, excepted to the opinion and ruling of the court, and tendered this his bill of exceptions, which after having been submitted to the counsel of Heywood Stackhouse is only signed in open court by the judge presiding, that the whole may appear of record.

(Signed) CHAS. LEAUMONT,
Judge.

Order and continuance.—Extract from minutes Thursday, 18th January, 1872.

WM. & H. STACKHOUSE
vs.
JAS. E. ZUNTS. } No. 18850.

429 This cause came on this day for trial, Roselius & Philips and J. P. Hornor for plaintiffs; R. Hunt & J. H. Ilsley for defendant. When after hearing further evidence, said case was closed by both parties, with the understanding that the testimony of Randell Hunt, esq., is reserved. The court then continued the case till Thursday, the 25th instant, at 11 o'clock a. m., for argument.

Order and continuance.—Minutes, 31st January, 1872.

W. & H. STACKHOUSE
vs.
JAS. E. ZUNTS. } No. 18850.

This cause came on this day for trial, Roselius & Philips and J. P. Hornor for pl'ffs; R. Hunt & J. H. Ilsley for def'd't. When, after hearing testimony of R. Hunt, esq., and argument of J. T. Hornor, counsel for pl'ffs, said cause was continued till Monday, the 5th February, 1872, at 10 a. m.

Order cause submitted.—Extract from minutes Monday, Feb'ry 5th, 1872.

430 W. & H. STACKHOUSE
vs.
JAS. E. ZUNTS ET AL. } No. 18850.

This cause came on to-day for further argument, Roselius & Philips

and J. P. Hornor for plaintiffs; R. Hunt and J. H. Ilsley for defendant. When, after hearing argument of counsel, said cause being submitted, the court took the same under advisement.

Judgment.—Rendered 20th February, 1872.

Fifth district court for the parish of Orleans.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

In this case, for the reasons assigned in the written opinion of the court, this day delivered and on file, it is ordered, adjudged, and decreed that there be judgment in favor of defendant; that the injunction herein be dismissed with costs, and that the said defendant, James E.
431 Zunts, do have and recover of plaintiffs, William and Haywood Stackhouse, and their surety on the injunction bond in solido, twenty per cent. damages on the amount of the judgment herein enjoined, together with eight per cent. interest, as allowed on the order of seizure and sale.

It is further ordered that the claim for attorneys' fees herein be dismissed.

Judgment rendered February 20th, 1872.

Signed March 5th, 1872.

(Signed) CHAS. LEAUMONT,
Judge 5th Dist. Court for the Parish of Orleans.

Motion and order.—Rule for a new trial.—Filed 24th February, 1872.

5th dist. court.

STACKHOUSE
vs.
ZUNTS. } No. 18850.

On motion of Roselius & Philips and Hornor & Benedict, att'ys for pl'ffs, it is ordered by the court that defendant do shew cause on Thursday, 29th February, 1872, at 10 o'clock a. m., why a new trial should not be granted in this case, on the following grounds, viz:

432 1°. That the judgment is contrary to law and evidence.

2°. Contrary to law, because the notes of plaintiffs were given for no consideration.

3°. Contrary to the evidence, because it was shown that the consideration stated by defendant in his testimony for said notes was not the real consideration for them; and it was further shown that the consideration was intended by the parties to be slaves, titles to which were to be made to plaintiffs by defendant as soon as the same could be done by the authorities.

4°. And for other reasons to be urged on the trial hereof.

Order rule continued.—Extract from minutes 29th February, 1872.

W. & H. STACKHOUSE
vs.
J. E. ZUNTS. } No. 18850.

The rule for a new trial in this case is continued till Tuesday, the 5th of March, 1872, at 10 o'clock a. m.

433 *Order dismissing rule.—Extract from minutes 5th March*, 1872.

W. & H. STACKHOUSE
vs.
JAS. E. ZUNTZ. } No. 18850.

The rule herein taken on the 24th February, 1872, came on this day for trial, Jos. P. Hornor for pl'ffs in rule, R. Hunt & J. H. Ilsley for def't in rule. When after hearing counsel, the court seeing no reason to change its opinion as heretofore expressed, it is ordered that said rule be dismissed and a new trial refused.

Motion and order for suspensive appeal.—Filed 13*th March*, 1872.

5th dist. court.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ ET AL. } No. 18850.

On motion of Roselius & Philips and Hornor & Benedict, of counsel for Wm. Stackhouse, Sarah F. Brooks, widow in community of Haywood Stackhouse, deceased, and natural tutrix of her minor children Herbert, Maud, Blanche, and Mabel Stackhouse, and Lilla Stack-
434 house, wife of J. W. Bryant, duly authorized and assisted by her husband, and the legal heirs of James P. Waters, dec'd, to wit, Henrietta A. Waters, wife of William Stackhouse, and by her husband duly assisted and authorized, Mrs. Widow Mary Upton, widow of Wheelock S. Upton, dec'd, and William H. Waters, and on suggesting to the court that said appearers and movers have been informed and believe that there is error to their prejudice in the final judgment rendered in the above entitled case by this hon. court on the 20th February, 1872, and that they are desirous of appealing suspensively from the same to the supreme court of the State of La., and on showing that the clerk requires time till the third Monday of April next to make the transcript of appeal, it is ordered that a suspensive appeal be accorded to said appearers and movers from said final judgment to the supreme court of Louisiana, the same to be therein returnable on the 3d Monday of April, 1872, upon said appearers giving bond and security conditioned
435 according to law, in the sum of thirty thousand dollars.

Appeal bond.—Filed 13*th March*, 1872.

Know all men by these presents, that we, William Stackhouse, Sarah F. Brooks, widow in community of Haywood Stackhouse, and natural tutrix of her minor children, Herbert, Blanche, Maud, and Mabel Stackhouse, and Lilla Stackhouse, wife of J. W. Bryant, duly authorized and assisted by her husband, and the legal heirs of James P. Waters, to wit, Henrietta A. Waters, wife of William Stackhouse, and by him duly authorized, and Mrs. Widow Mary Upton, widow of Wheelock S. Upton and William H. Waters, as principals, and Henry F. Given for twenty thousand dollars, Lucien J. Doizé for five thousand dollars, Armand Doizé for five thousand dollars, James Byrnes for five thousand dollars, William H. Thomas for five thousand dollars, are held and firmly bound unto Louis Tower, clerk of the fifth district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum

of forty thousand dollars, for the payment whereof we bind our-
436 selves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated in the city of New Orleans, on this 13th day of March, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas the above bounden William Stackhouse, Sarah F. Brooks, widow in community of Haywood Stackhouse, and nat. tutrix of her minor children, Herbert, Blanche, Maud, and Mabel Stackhouse, and Lilla Stackhouse, wife of J. W. Bryant, duly authorized and assisted by her husband, and the legal heirs of James P. Waters, to wit, Henrietta A. Waters, wife of Wm. Stackhouse, and by him duly authorized and assisted, Mrs. Widow Mary Upton, widow of Wheelock S. Upton, and William H. Waters, have this day filed a motion of appeal from a final judgment rendered against them in the suit of Wm. & H. Stackhouse vs. J. E. Zunts et al., No. 18850, in the fifth district court for the parish of Orleans, on the 20th day of February, 1872, and signed on the 5th day of March, 1872:

437 Now the condition of the obligation is such that the above bound William Stackhouse, Sarah F. Brooks, widow in community of Haywood Stackhouse, and nat. tutrix of her minor children, Herbert, Blanche, Maud and Mabel Stackhouse; and Lilla Stackhouse, wife of J. W. Bryant, and by him duly authorized and assisted; and the legal heirs of James P. Waters, dec'd, to wit, Henrietta A. Waters, wife of William Stackhouse, and by him duly authorized and assisted; Mrs. Widow Mary Upton, widow of Wheelock S. Upton; and William H. Waters, shall prosecute said appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Henry F. Given, to the extent of twenty thousand dollars, and the said Lucien J. Doizé, Armand Doizé, James Byrnes, and Wm. H. Thomas, to the extent of five thousand dollars each, shall be liable in their place.

(Signed) WILLIAM STACKHOUSE.
" SARAH F. STACKHOUSE,
Widow in Community & Natural Tutrix.
(Signed) LILLA A. BRYANT.

438 I authorize my wife.
(Signed) J. W. BRYANT.
(Signed) HENRIETTA A. STACKHOUSE.
I authorize my wife.
(Signed) W. STACKHOUSE.
(Signed) MARY UPTON.
(Signed) W. H. WATERS.
Sureties:
(Signed) HENRY F. GIVEN.
" LUCIEN J. DOIZÉ.
" ARMAND DOIZÉ.
" JAMES BYRNES.
" WM. H. THOMAS.

Motion and order.—Rule to set aside appeal.—Filed March 18th, 1872.

Fifth district court, parish of Orleans.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

Injunction suit.

On motion of Randell Hunt and John H. Ilsley, of counsel for James E. Zunts, the defendant in the above suit, it is ordered that the plaintiffs in said injunction suit show cause, on Friday, 22d March, 1872,
439 at 10 o'clock a. m., why the suspensive appeal in the said injunction suit, allowed the plaintiffs therein on the 13th day of March instant, 1872, should not be quashed and dismissed, and the order of seizure and sale enjoined by said injunction suit proceeded with according to law, on the following grounds, to wit:

1°. That the amount of the appeal bond, i. e. forty thousand dollars, is wholly insufficient to operate a supersedeas, or suspensive appeal, from the judgment rendered in said injunction suit.

2d. That the sureties on the appeal bond are not good and solvent, and that neither of the said sureties has property sufficient to answer for the amount of his suretyship on said appeal bond, and are not such as the law requires. And

3rd. That the appeal bond is not such a one as the law requires.

Sheriff's return on copy of above rule.

Received March 20th, 1872, and on the 21st day of March, 1872, I served a copy of the within rule on Jos. P. Hornor, esq., personally, attorney of plaintiff.

(Signed) J. A. GOUDOLFY,
D'y Sh'ff.

440 *Order.—Rule continued.—Extract from minutes, Friday 23d March, 1872.*

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

The rule herein taken on the 18th instant is continued till Wednesday the 27th of March, 1872, at 10 o'clock a. m.

Order.—Rule continued.—Extract from minutes, Wednesday, 27th March, 1872.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

The rule herein taken on the 18th instant is continued till next Wednesday, the 3d of April, 1872, at 10 o'clock a. m.

Order.—Rule dismissed.—Extract from minutes, April 3d, 1872.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

441 The rule herein taken on the 18th March, 1872, came on this day for trial; J. H. Ilsley and R. Hunt, for pl'ff in rule; Roselius & Philips & J. P. Hornor, for defendants in rule; when, after hearing evidence, the court deeming the sureties on the appeal bond herein amply solvent, it is ordered that said rule be dismissed.

Opinion of supreme court of the State of Louisiana, delivered by Associate Justice W. G. Wyly, May 31, 1873.

WM. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 4019.

Appeal from 5th district court, parish of Orleans.

The plaintiffs enjoined the executory proceedings sued out by the defendant on their two mortgage notes executed in February, 1865, on the ground that the consideration of said notes was the price of slaves. The court dissolved the injunction with damages and the plaintiffs appealed.

442 That the plaintiffs would give their notes and mortgage their plantation in February, 1865, for $50,000, or for the price of slaves, is highly improbable.

It is still more improbable that Zunts "persuaded" them, as they allege in their petition, "to give said notes and mortgage by assuring them that long before the maturity of said notes he would sell to them certain slaves, well knowing that he could not do so, as slavery had been abolished," and all the required from Zunts in return was his verbal promise to convey said slaves.

In order to escape liability on the ground that the consideration of the notes was illegal, the plaintiffs must show, not merely a preponderance of evidence in their favor, but proof "so complete that it forces itself upon the conviction with the power of demonstration." (Hertz vs. Wilder, 10 A, 199; Denlon vs. Erwin, 6 A, 317; Weaver vs. Aufourx, 20 A, 12.)

443 After maturely considering the evidence in this case, which is voluminous and conflicting, we have come to the conclusion that the plaintiffs have failed to establish their defense with that certainty required by the jurisprudence of this State.

Finding, therefore, as a matter of fact that the consideration of the notes was not for the price of slaves, it becomes unnecessary to consider the questions of law presented so ably by the learned counsel engaged in this litigation.

It is therefore ordered that the judgment herein in favor of the defendant be affirmed with costs.

STACKHOUSE
vs.
ZUNTS.

I agree in the conclusion to which the court have arrived in this case, and reserve the right to express my views in a separate opinion.

P. H. M.

I dissent from the opinion of the majority of the court, & I will hereafter file my reasons.

Mr. Justice Howell concurs with me in dissenting.

(Signed) JNO. T. LUDELING,
Chief Justice S. Court.

444 *Petition for rehearing.*

In the supreme court, State of Louisiana.

W. & H. STACKHOUSE
versus
JAMES E. ZUNTS. } No. 4019.

Appeal from the fifth district court for the parish of Orleans.

Petition and brief for rehearing on question of jurisdiction, want of proper parties, and nullity of judgment.

To the honorable the chief and associate justices of the supreme court of Louisiana:

The petition of William Stackhouse and Sarah F. Brooks, widow in community of Haywood Stackhouse, and natural tutrix of her minor children, Herbert, Blanche, Maude and Mabel Stackhouse, and Lilla Stackhouse, wife of J. W. Bryant, duly authorized and assisted by her said husband, plaintiffs and appellants in the above entitled suit for a rehearing, respectfully shows:

That in addition to the reasons assigned by their other counsel,
445 they respectfully beg leave to submit, through the undersigned, the following grounds and argument for a rehearing in this case and to urge the same upon the attention of your honors.

This suit was originally instituted in the second judicial district court for the parish of Plaquemines, and subsequently, without authority of law, transferred to the fifth district court for the parish of Orleans. At page 138 of the record we find the following agreement, filed November 29, 1867:

In the second judicial district court in and for the parish of Plaquemines.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18850.

JAMES E. ZUNTS
vs.
W. & H. STACKHOUSE.

It is agreed that these cases are to be transferred on the original pleadings as they stood before the order for an alias order of seizure and sale was applied for and granted to the fifth district court of New Orleans, and that all the papers in the case as above stated are to be taken from the second judicial district court, in the clerk's office of the parish of Plaquemines, and filed in the said fifth district court of New
446 Orleans, and put upon the court docket for trial as if the case had been instituted in that court; all the testimony taken in the

case shall be used and may be objected to in the same manner as if the case had been tried in the parish of Plaquemines; the petition and order for an alias order of seizure and sale are to be dismissed, as well as the seizure made under it; and it is further agreed that William and H. Stackhouse shall execute a bond in the sum of twenty-five thousand dollars, with Given, Brown & Co. as sureties, as additional security for the payment of the debt claimed by said Zunts, say fifty thousand dollars, with interest and costs, in case a final judgment should be rendered in favor of said Zunts for the same; that is, if the injunction sued out by Wm. & H. Stackhouse should be dissolved and the defence set up by them should not be sustained, all costs to abide the final decision.

New Orleans, November 28, 1867.

(Signed) ROSELIUS & PHILLIPS,
For Wm. & H. Stackhouse.

(Signed) RANDELL HUNT & L. MADISON DAY,
For James E. Zunts.

447 Then comes the following, on page 140 of the record:

On motion of Roselius & Phillips, of counsel for W. & H. Stackhouse in the foregoing cases, and with the consent of L. Madison Day & R. Hunt, esqrs., of counsel for James E. Zunts, it is ordered that these cases be transferred to the fifth district court of New Orleans, in pursuance to the agreement made between the parties, and that the clerk of the second judicial district court, parish of Plaquemines, deliver the papers in the case accordingly.

It is further ordered that the sheriff release the property seized by him upon a due execution of a security bond.

We consent to the above, including the portion added in the last line.

(Signed) RANDELL HUNT.
" L. MADISON DAY.

N. O., Nov. 28th, 1867.
(Signed) R. KING CUTLER.

W. & H. Stackhouse gave the bond in accordance with this agreement (R., p. 141), and the case was accordingly transferred to the fifth district court for the parish of Orleans, tried and decided by that tribunal.

I.

448 The fifth district court for the parish of Orleans was without jurisdiction, ratione materiæ and ratione personæ, to hear and determine this case.

The suit by Zunts against W. & H. Stackhouse to foreclose an alleged mortgage, was properly instituted in the second judicial district court for the parish of Plaquemines. The defendants resided in said parish, and the property, Bellechasse plantation, upon which it is averred the mortgage rested, was likewise situated there. (C. P., Arts. 162 and 163, 736.)

The suit of W. & H. Stackhouse vs. James E. Zunts, enjoining the writ of seizure and sale, was also correctly brought before the court issuing the order for execution process. (C. P., Arts 738, 749, 750.)

The fifth district court for the parish of Orleans could not legally try an injunction against a writ of seizure and sale issued by the second ju-

dicial district court for the parish of Plaquemines. The court alone had authority to maintain or dissolve the injunction it had issued against its own process.

The execution of a judgment can be enjoined by no other court
449 than that from which the writ issued. (Dufassat vs. Berens, 18a, 339.)

Moreover, the suit of Zunts to foreclose his alleged mortgage was a real action. The judgment taken out by Stackhouse against the execution issued by Zunts was not a new suit, but in the nature of an opposition in the original suit to foreclose the mortgage, and forms part of it.

"An injunction against an execution is not a new suit, in which the debtor becomes plaintiff, but in the nature of an opposition in the first suit, and forms part of it." (Rowlet vs. Shepherd, 4 L., 90; Johnson vs. Hickey, ib., 293.)

The res in the present case was in the parish of Plaquemines; the mortgagors resided there; the suit to foreclose the mortgage was instituted there; and hence we conclude the fifth district court for the parish of Orleans was without jurisdiction, ratione materiæ, to pass upon the injunction sued out to prevent the foreclosure of the mortgage held by Zunts.

2d. Nor had the fifth district court jurisdiction, ratione per-
450 sonæ, as the defendants resided and were domiciliated in the parish of Plaquemines, a fact judicially admitted.

In his petition Zunts avers the mortgage notes sued on are "drawn by William Stackhouse and Haywood Stackhouse, both of the parish of Plaquemines," (R., p. 2.) The sheriff's return on the writ of seizure and sale shows that he "served a copy of the petition and citation, and also notice of seizure and sale, on William and Haywood Stackhouse personally at their residence in this (Plaquemines) parish." (Ac. R., p. 14.)

In their petition for injunction William and Haywood Stackhouse describe themselves as "residing in (Plaquemines) parish," (R., p. 1.)

This fact being established, the article of our Code of Practice, 161, lays down the law in clear, explicit, and unmistakable terms: "It is a general rule in civil matters that one must be sued before his own judge, that is, before the judge having jurisdiction over the place where he has his domicil or residence, and shall not be permitted to elect any other domicil or residence for the purpose of being sued; but this rule
451 is subject to those exceptions expressly provided for by law.

The case in hand does not fall under any of the exceptions mentioned in our Code of Practice, but, on the contrary, arts. 61, 62, et seq., relative to the hypothecary action, and art. 736, authorizing "the judge within whose jurisdiction the property subject to the privilege or mortgage is situated, to issue the order of seizure and sale notwithstanding the debtor resides out of his jurisdiction," but confirms and strengthens the position we hold, to wit, that the fifth district court for the parish of Orleans was without jurisdiction ratione personæ.

II.

The transfer of this case from the district court of Plaquemines Parish to the fifth district court of New Orleans, by consent of parties, was in violation of a prohibitory law, and all proceedings had in the latter tribunal must be considered as null and void, and of no effect whatever.

We have demonstrated to your honors that it is judicially admitted by all parties that the Stackhouses were domiciliated in the parish of

Plaquemines. The act of the legislature passed in 1861 (p. 137),
452 amending art. 162 of the Code of Practice, is now a rule of public policy, established by the law-making power of the State, and upon numerous occasions this court has held that it would not tolerate or recognize any infringements, violations, or evasions of this positive prohibitory legislative enactment. (Broadwell vs. Rodriguez, 18 An., 79.)

"A party cannot be sued at any other domicil, or before any other court, than the one having jurisdiction over the place of residence. By the provisions of the act of the legislature, approved April 19th, 1861, No. 173, any party defendant is prohibited from electing any other domicil than that of his residence for the purpose of being sued. Acts of 1861, page 137." (State ex rel. Sandlin vs. Judge of eleventh judicial district, 21 An., p. 258.)

"The district judge is without authority, either on his motion or by the consent of parties, to transfer a suit from the parish of the domicil of the defendant to another parish of the State. All proceedings had in a cause after such transfer are null." (State ex rel. M. H. Twitchell vs. J. R. Head, 21 An., 550.)

453 A judgment rendered against a party whose domicil and residence is not in the parish where the court is held, is null and void because the court is without jurisdiction ratione personæ. In such a case consent of the defendant cannot give jurisdiction. Acts of 1861, amending art. 162, C. P." (Richardson vs. Hunter, 23a, 255.)

These authorities are conclusive upon the question of jurisdiction, to which we call the attention of the court. The opinions delivered in the cases above cited were unanimously concurred in by every member of the court, and being of recent date are no doubt fresh in the memories of your honors.

III.

The act of the legislature (1861), the application of which we invoke in the present instance, is of a prohibitory character, and the court will, ex officio and of its own motion, take notice of any attempted violations or evasions of its provisions. In fact, such has heretofore been the course pursued by your honors.

In the case of State ex rel. Sandlin vs. Judge Eleventh Judicial District (21 An., p. 258), although the question of jurisdiction was not
454 raised by counsel, the court, ex proprio motu, passed upon the very point to which we now direct its attention.

"Whatever is done in contravention of a prohibitory law is null, though no penalty be denounced for its violation. So of every act contrary to public policy. Their nullity is pronounced by the general principle of the law, and applied by the courts as cases may arise. Pacta privata juri publico derogare non possunt." (Cotton vs. Brien, 6 R., 115.)

IV.

Your petitioners also respectfully call your honor's attention to the fact that the judgment appealed from was rendered against them without their having become or having been made parties in the court below The judgment is null for want of proper parties and for the want of service of any citation, or its equivalent, on your petitioners.

The proceedings in this case were commenced by a petition filed by

James E. Zunts, praying for executory process to enforce the payment of two promissory notes drawn by William Stackhouse and Haywood Stackhouse, in solido, to secure which they had given a single and entire mortgage, by act importing confession of judgment.
455 (See Rec., p. 1, et seq., p. 5 and p. 7, et seq.)

The order for executory process was granted as prayed for; but before execution, William Stackhouse and Haywood Stackhouse filed their petition of opposition (C. P., 738) alleging that the notes had been obtained by unlawful means, "were given without any legal consideration, were illegal, iniquitous, and against good conscience," (C. P., 739, par. 6), because of certain facts specially set forth to the effect that the cause of said notes is void. (C. P., 742.) (See Rec., p. 1 bis, et seq.)

On this petition an injunction was issued, and after the illegal transfer of the opposition to the fifth district court for the parish of Orleans, a judgment was rendered dissolving the injunction, etc. (See Rec., p. 297.) The defendants and opponents, W. and H. Stackhouse, appealed. (See Rec., 299.)

Pending the appeal, Haywood Stackhouse died, and your petitioners were made parties to the appeal by means of the following order:

456 Supreme court.

Extract from the minutes, Tuesday, May 31st, 1870.

W. & H. STACKHOUSE *vs.* JAMES E. ZUNTS. } No. 2020.

AND

JAMES E. ZUNTS *vs.* W. & H. STACKHOUSE. }

On motion of Randell Hunt and L. Madison Day, of counsel for James E. Zunts, and on suggesting to the court that Haywood Stackhouse, one of the appellants in said cause, has died since this appeal was taken; that his succession has been opened in the parish court for the parish of Plaquemines by his widow, Sarah F. Brooks, who has been appointed and qualified in said court as natural tutrix of his and her minor children; that the said Sarah F. Brooks resides in the parish of Plaquemines; that the affidavit required by the rules of this honorable court has been made, and that the same is now on file in this court, it is ordered by the court that an order do issue summoning the said Sarah F. Brooks, widow of Stackhouse, one of the appellants in this cause, and tutrix of her minor children, to make herself a party to this
457 cause in her capacity as tutrix of her minor children, and representing the succession of her late husband, H. Stackhouse, within twenty-five days from the receipt of said summons.

The decision on that appeal was rendered on 27th May, 1871. The terms of your honor's decree are as follows:

"That the judgment of the district court be annulled; that this case be remanded to the court a qua to be tried de novo, etc. (See Rec., p. 306.)

The mandate of the supreme court was filed in the court below, but Zunts wholly omitted to make your petitioners parties to the proceedings in that court, and your petitioners never made themselves parties therein by any voluntary appearance by counsel or personally.

On the contrary, the case was proceeded with by Zunts and his counsel, and by the former counsel of William and Haywood Stackhouse, as if the latter was still alive. (1.) The death of Haywood; (2) the fact that petitioners, his widow and heirs were his proper representatives, and (3) the law whereby it was necessary for the plaintiff, Zunts, to have them notified before proceeding to trial in that court, were wholly ignored.

458 To show how absolutely the case was so treated, we call your honor's attention in general to the various entries on the minutes, but particularly to two or three very striking points shown by the record.

The first is the bill of exceptions found at page 430 of the record. It shows that Mistress William Stackhouse was presented to the court to be sworn as a witness on behalf of Haywood Stackhouse. Thereupon the counsel for Zunts objected on the ground that the wife of one of the plaintiffs (?) could not be a witness for the other plaintiff in injunction; and all through the bill showing that the case was being tried against the dead man Haywood Stackhouse himself, and representing him as personally before the court, offering evidence on his own behalf, etc., "and tendered this his bill of exceptions, which, after having been submitted to counsel of Haywood Stackhouse," etc. (R., p. 432.)

459 The second feature is the notice to cross-interrogatories found at page 311. It is addressed, not to these petitioners, or any counsel appearing for them, but "To Messieurs Wm. & H. Stackhouse, through Roselius & Phillips, attorneys for plaintiffs."

The third peculiar feature showing conclusively that the case was being proceeded with, was tried and decided for and against Haywood Stackhouse, and in total obliviousness of his death, is the judgment of the district court, (pp. 915 and 916,) which has been inadvertently affirmed by your honors. It directly condemns William and Haywood Stackhouse personally and by name, and their surety in solido, twenty per cent. damages on the amount of the judgment enjoined, (id est, to pay $10,000 damages) eight per cent. interest and costs.

On being informed of this judgment, your petitioners took their appeal, with the hope that, agreeably to article 608 and 609 C. P., the nullity of the judgment, apparent as it is on the face of the record, would be declared by your honors.

We will now proceed to show how this nullity results from the above facts.

460 § 1.

It is clear to our minds that the motion making us, your petitioners, parties to the first appeal, had not the effect of itself of bringing us into the court a qua.

In the case of Norton vs. Jamison, (23d An., 103,) the facts in regard to a judgment rendered against H. R. W. Hill and his heir, James D. Hill, are in several particulars similar to those regarding Haywood Stackhouse and these petitioners in this case. It was there decided that the judgment rendered against a party deceased and his heirs was a nullity, though his heir had appealed and the judgment had been affirmed. Your honors decided that "the insertion of the word heirs in the decree gave no force to the judgment against his heir or legatee any more than a judgment against any person eo nomine who is not cited." Your honors go on to say further: "The subsequent appearance of Jas. D. Hill as a party to the proceedings, in order to appeal from the circuit court

to the supreme court, may have made him personally liable under the judgment rendered on appeal, but," etc.

It follows that our being made parties to the former appeal,
461 and our appearance in order to appeal from the last judgment of the district court to this supreme court, can give no force or effect against us, and to the judgments rendered against Haywood Stackhouse.

When this case was before your honors on the first occasion, there was no judgment rendered against Haywood Stackhouse. Neither was there an insertion of the words "and heirs," on appeal. On the contrary we were entirely successful in that instance; the first judgment was annulled and the case remanded to be tried de novo. Now, this certainly did not make us parties in that court, for it is only by proper process, issued from a court and duly served, or by voluntary appearance, that one can be held as a party to proceedings there. This is a rule so often and rigidly enforced by your honors, that it cannot be now controverted with any show of reason. Non constat, that Zunts, after the decision on the first appeal, would ever have thought it his interest to contest the case against us. At any rate a prerequisite of his doing so was to cite or notify us. Often have heirs or representatives obtained the annulment of judgments rendered against those to whom they
462 have succeeded; and in every instance it has been held that the suit could not be renewed against them without process from the court a qua, or voluntary appearance. The same rules and laws exist in regard to making parties in the inferior courts as in the supreme court, and these cannot be disregarded with impunity. (C. P., arts. 21, 120, 361, 113, 572.)

In tutorship of Stokes, (22d An., 204,) your honors decide that "the signing of the appeal bond, and an assignment of errors in this court, will not cure the defect existing in the court below." A court can presume nothing in respect to a party being cited; nothing will cure defect of citation or want of service except appearing and answering to the merits (5 N. S., 429; 7 N. S., 161; 1 R., 30; 13 An., 374). Knowledge of suit on the part of any one, no matter how clearly brought home to him, will not supply want of citation. (2 L., 172; 4 L., 154; 13 L., 11; 6 R., 9; 3 An., 9.) A judgment rendered against a party who has neither been cited or appeared is an absolute nullity, which may be in-
463 voked by any one interested (1 N. S., 9; 8 N. S., 145; 6 L., 577; 16 L., 570; 17 L., 42, 448; 2 An., 403; 13 An., 150). No valid judgment can be rendered against a party until he is legally cited. (21 An., 613, 630; 17 An., 91.) Hence the fact being that we were never cited by the fifth district court, and no process whatever was ever issued by that court to bring us before it, the trial or judgment in that court cannot have any binding force or effect against us.

"Our code of practice requires that if the defendant should die after issue joined, his heir must be cited. This is what should have been done; and, until it was done, judgment could not have been regularly given in the district court against the succession of the deceased." (McMicken vs. Smith et al., 5 N. S., 430; Woodman vs. Richardson, 15 An., 508)

"An attorney has no right to carry on a suit after the death of his client. In such case the heirs must be cited. The judgment annulled and case remanded for that purpose." (Bourguignon vs. Boudousque, 3 L., 527.)

"Even where there are more plaintiffs than one, the others not having authority to represent the one if he dies during the progress of the

cause, no valid judgment can be pronounced until his heirs or
464 representatives be brought into court." (Babcock vs. Williams, 10 L., 396.)

"Where, pending the suit, one of the parties dies, and it is afterwards decided without the heirs having been made parties, the appeal will not be dismissed, but the case remanded, in order that the heirs may be made parties to the action," in the court a qua. (Bates vs. Weathersby, 2 An., 484.)

When you ordered this case to be remanded for proceedings de novo, it was necessarily implied that this was to be done before the case could proceed. Nothing in the law required to be done to carry on the proceeding de novo could be dispensed with unless expressly waived.

"The party should have been notified of the revival." (Picquet's heirs vs. Pierce, 5 L., 363; Rhodes vs. Scholfield, 6 An., 251.)

"Where the representatives of a deceased person pursue a suit which has been commenced by the deceased, it is considered rather as a new suit than as an amendment, and should be done by petition and citation, and an issue made upon the new pleadings before proceeding to trial." (Rhodes vs. Scholfield, 6 An., 251.)

465 "If, after issue joined, either plaintiff or defendant die, it is not necessary to recommence the action; it continues between the surviving party and the heirs of the one deceased, pursuant to the provisions enacted in the first part of this code." (C. P., 361.)

Hence the dispositions of article 120 apply as well in regard to the death of a plaintiff as to that of a defendant.

In Walworth vs. Stevenson, (24 An., 253), your honors quoting from 1 N. S., 9, and citing numerous other precedents, say:

"In every judgment the agency and presence of three parties are required, judex, actor et reus. To condemn without first hearing a defendant or giving him an opportunity to be heard is contrary to all principles of equity and law. Therefore a judgment rendered against a person without citing him in the ordinary manner, without his appearing or anything deemed by law equivalent to citation and appearance, is utterly void and imports such absolute nullity that any one the least interested in opposing its effects may have such nullity pronounced.

"The broad and well recognized distinction that judgments absolutely null have no existence in law, while those only relatively null
466 have an existence till they are set aside, seems to have been ignored by the learned judge a qua.

"The defendant's title is without foundation, as it rests on a judgment which has no legal existence, and which, therefore, cannot be the source of any legal right or obligation."

And your honors thereupon proceeded to annul the title of one who had purchased at a judicial sale made under a judgment rendered on a defective citation and to condemn the purchaser at that sale to pay rents as a possessor in bad faith.

§ 2.

Being parties to an appeal or parties to a judgment in the court a qua are two different things.

Doubtless if a decree had been given on a previous appeal from the judgment rendered during the lifetime of Haywood Stackhouse affirming the judgment of the court a qua, in toto or in part, we would have been bound by it. But this court refused to pronounce definitely, and

remanded the cause to the court of the first instance to be tried de novo. Hence we escaped all liability for or on account of the
467 previous judgment, which had no longer any existence whatever.

The case stood then exactly as if Haywood Stackhouse had died before any judgment whatever had been rendered.

What then happened? All the proceedings, trial, and judgment took place, notwithstanding the death of Haywood Stackhouse, against him eo nomine, and in no wise against us, his heirs or representatives.

It follows, too, that even conceding the impossible hypothesis, that the judgment remanding the case in the first instance we became parties there, still, since the proceedings were not carried on by us or against us, but expressly in relation to the dead man, Haywood Stackhouse, we are not affected by those proceedings or the judgment that followed on them. If we were the parties Zunts sought to reach he should have proceeded contradictorily with us, either as absent or present. When incidental notices for crossing-interrogatories or the like were necessary, they should have been expressly addressed to us or to counsel representing us, and not to the dead man and his
468 counsel. But Zunts was seeking no such end; he was endeavoring to try the case against a dead man only. We have a right to say so, for he proceeded to obtain a judgment against the dead man and was content. He made no attempt whatever to obtain a judgment against us, nor has he in fact obtained one.

Neither have your honors rendered a judgment against us. You have only affirmed a judgment rendered against the dead man after his death, and we stand before you only as third parties who have appealed from a judgment rendered against another. (C. P., 571.) It may be reversed or affirmed as to him, but it can never be transformed into a judgment against us or our property eo nomine, for our existence was ignored in everything that was done after the case was remanded.

§ 3.

Let it also be borne in mind that it would have served no purpose to revive the suit against your petitioners in the parish of Orleans. The reasons already given prec'uded the possibility of the courts of that parish taking jurisdiction. Then, besides that insuperable objec-
469 tion there was another: The tutrix of the minor heirs of Haywood Stackhouse was without capacity or authority to waive the jurisdiction of the proper tribunals of the parish of Plaquemines, before which those minors, who were necessary parties, could legally sue or be sued. (Bates vs. Weathersby, 2 An., 484; Greig vs. Muggah, 11th Lou., 360.)

§ 4.

But perhaps we owe your honors an apology for first presenting our case as if judgment had been rendered against us eo nomine without previous citation or notice of revival. The positive state of the case is there was no such judgment, but only a judgment against a dead man. The judgment we appealed from and of which we demand the nullity on this appeal is one rendered not against us but against the deceased Haywood Stackhouse, eo nomine, after his death.

Of course, your honors, while the matter is still in your hands and under your control, cannot permit yourselves to persist in such a judgment when its absolute nullity is patent on the face of the records

of this court. You would violate the rule you have always applied in such cases, that you will notice such nullities ex proprio motu at any stage of the proceedings You would be voluntarily and avec connais sauce de cause, affirming a judgment which could be successfully enjoined, for the dead party against whom it would have been rendered and affirmed eo nomine would not have been either before the court a qua or this court, at the time of trial, rendition, or affirmance.

The judgment is not against us, your petitioners, and we might have turned our backs upon it and waited to see how it could be carried into execution on the property we have inherited. Any attempt so to do would, of course, have been vain. Even a sale of the property under it would have been null. (See 24 An., 253; see also 24 An., 472.)

But upon consideration we have preferred at once to call your honors' attention to this gross irregularity and absolute nullity. Indeed, we had a right to expect that your honors would have noticed it.

It seemed that if your honors concluded the case on the merits in favor of Zunts, and came to concur in the opinion of the judge a qua, you would have to consider the terms of his judgment before affirming it. It was clear to us that you could not and would not simply affirm the judgment on seeing that, though rendered long after Haywood Stackhouse's decease, it was eo nomine against him; that it was eo nomine against one who, at the time of the trial and judgment, was a dead man.

As for ourselves we could have no apprehension, since the proceedings before were not carried on by us or against us, and since, on the contrary, as before shown they were carried on, the trial had, and the decree rendered expressly against that dead man. His death was both tacitly and expressly ignored. So were his heirs and representatives. There is nothing said or done in the record to bind us. No judgment against us.

Our position was simply this: To all legal intents and purposes we stood in regard to those proceedings, trial, and judgment as third parties, having, however, an interest in obtaining, by appeal, the reversal or annulment of that judgment. We have exercised that right and now pray your honors to give a rehearing so that the case may be decided with a proper understanding of the true position and relation of the parties to this appeal, respectively.

It suffices under this head to refer your honors to your former decisions.

"No judicial proceedings can be carried on in the name of a dead man; nor can the property he leaves be taken from his heirs and legal representatives without proceeding against them as directed by law." (Gerard's ex. vs. Reed, 5 Rob., 508; Andrews vs. Banks, 5 An., 737.)

"A judgment against one who, though cited, dies pendente lite, is null." (Carrollton Co. vs. Bosworth, 8 An., 80; Kerr vs. Hays, 9 An., 241; Succ. of Whitten, 9 An., 417; Surgi vs. Colmar, 22 An., 20.)

"An order of seizure and sale cannot be executed after the death of the debtor, although it may have been obtained during his lifetime." (Jenkins vs. Tyler, 3 N. S., 182; Surgi vs. Colmar, 22 An., 20.)

"If the defendant should die after suit commenced, his heir should be cited. Until this be done judgment cannot be rendered. Notice required by C. P. 120 should be given." (McMicken vs. Smith, 5 N. S., 431; Prall vs. Peet, 3 L., 276; Bourguignon vs. Boudousque, 6 L., 527; Carlile vs. Holdship, 15 L., 376; Bedford vs. Shelton, 18 An., 10).

The want of proper parties for a final decree may be brought to the notice of the court at any time. The court will even notice it ex-officio, without a formal motion.

The reason of this is that a court will, so long as there remains an opportunity of doing so, avoid doing a vain, nugatory, and even illegal act, that of rendering or affirming a judgment for or against parties not before it.

For this reason your honors have followed this rule in a multitude of cases, where the proper parties to appeals were not made.

For the same reason your honors must refuse to maintain the judgment of of a district court when, at any stage of the proceedings, the want of proper parties in that court is brought to your notice. Such notice is so taken because such a judgment is an absolute nul-
474 lity. (See Edwards vs. Edwards, 21 An., 610; Hartman vs. Renthrope, 21 An., 662, C. C. 12; 1 N. S. 1; 6 L. 377; 11 R. 121; 6 R. 205; 2 Ann., 509, 503; 5 An., 633; 13 An., 431; 6 An., 365; 2 An., 492., etc.)

"The want of citation is a nullity which may be urged on appeal." (15 An., 86.)

"A case must be remanded when the defendant did not appear, and citation was not served on him." (McCan et als. vs. Golden Age, 17 An., 91.)

"Where the defendant is cited personally, and as president of a company, and answers for himself alone, there is no issue joined, and the case will be remanded." (Jefferson vs. Kaiser et al., 17 An., 176; Braunsdorff vs. Mason et al., 18 An., 187; Berthoulin vs. Bourgoin, 19 An., 360; Cole vs. Heocha, 21 An., 613; Arnaula vs. Julian, 21 An., 630; Riggin vs. Merchants' Bank, 19 An., 373; Villeneuve vs. Leblanc, 21 An., 26.)

V.

Not doubting that your honors will agree with us in regard to the nullity of the judgment against Haywood Stackhouse, we beg leave to call your attention to a necessary consequence of that nullity.

475 It is, that the writ of seizure and sale issued by the district court for the parish of Plaquemines can in no part be executed so long as the injunction on the part of Haywood Stackhouse subsists—is not removed by proper proceedings and a lawful judgment.

On this point there is no need of searching for precedents. The Civil Code in regard to the indivisibility of mortgages and of their enforcement is clear and categorical.

ART. 2109, (2105). "An obligation is indivisible, though the thing, or the fact which is the object of it, be by its nature divisible, if the light in which it is considered in the obligation does not admit of its being partially executed."

ART. 2111 (2107). An obligation susceptible of division must be executed between the creditor and debtor as though it were indivisible. The divisibility is applicable only in regard to their heirs, who can demand of the debt, or who are liable to pay of it, only the part which they hold, or which they are liable, as representing the creditor or the debtor."

ART. 2112, (2108). "To the principle laid down in the prece-
476 ding article, there is an exception with regard to the heirs of the debtor.

1. In case the debt be on a mortgage. * * * 5. When it results from the nature of the engagement, or from the thing which is its

object, or from the end proposed by the contract, that it was the intention of the parties that the debt should not be partially discharged."

"In the first case the heir who is in possession of the thing due, or of the property mortgaged for the debt, may be sued for the whole on the thing due or on the property mortgaged," etc.

"In the fifth case every one of the heirs may be also sued for the whole," etc.

It follows from these laws that, even were Haywood Stackhouse alive, the obligation could only be executed against him alone, or against William alone, as if the plantation, the object of the mortgage, were indivisible, (arts. 2109 and 2111,) and since neither was sole possessor both would have been necessary parties to the execution on the property mortgaged.

It results also when a mortgage has been given on several distinct pieces of property, the possessor of each distinct piece may be
477 sued for the whole debt, and the piece held by him be sold indivisibly, for the whole debt; but we know of only one instance where a mortgage was foreclosed against several mortgagors by the sale of their undivided interest in a single distinct piece of property; but in that instance all the above cited articles of the Code were absolutely overlooked.

See also on this subject arts. 1421 (1370) et seq.; 1433 (1382) et seq.; 1437 (1386), 1438 (1387), et seq. See also 2150 (2146), 1253 (2149).

We are confirmed on this point by the opinion of the learned counsel, Judge Ilsley, who conducted the trial in the district court for Mr. Zunts. In his bill of exception to the testimony of Mrs. William Stackhouse, one of the grounds taken is as follows, viz: "Second. That the whole of the joint debt evidenced by the two notes now in litigation is secured by special mortgage on the Bellechasse plantation, owned jointly by the mortgagors, William Stackhouse and Haywood Stackhouse, which said mortgage is indivisible and affects all and every portion of said property mortgaged, and that if, by the testimony of Mrs. William
478 Stackhouse, Haywood Stackhouse was released from his portion of the debt evidenced by the notes, it would necessarily relieve the undivided half of William Stackhouse." (R., p. 431.)

Finally, we urge upon your honors the conclusion arrived at in Babcock vs. Williams, (10 Lou., 396), cited above. The court said: "In the present case one of the plaintiffs has ceased to exist, and the other is without authority to represent him; the defendants, if judgment was given against them, would, notwithstanding, remain liable to the action of the representatives of the deceased. The rights of the latter cannot be acted on until they become parties to the suit. The case must be remanded to afford the opportunity of this being done."

Respectfully submitted.

E. HOWARD McCALEB,
Of Counsel for Appellants.

Opinion of supreme court of La. on rehearing delivered by Asso. Justice T. H. Morgan, December 15th, 1873.

W. & H. STACKHOUSE
vs.
JAMES E. ZUNTZ. } No. 4019.

479 On the 15th March, 1860, at a sale of the succession property of Samuel Packwood, James E. Zunts purchased the Bellechasse plantation and slaves belonging thereto for $250,000.

On the 13th January, 1865, Zunts had paid on the purchase price of this plantation $116,488.08. For this balance Zunts had been sued, and the heirs of Packwood were litigating among themselves with regard to the distribution of the proceeds of the sale of this plantation.

On this day, 13th January, 1865, all the heirs of Packwood, Zunts, and W. & H. Stackhouse, appeared before Hugh Madden, a notary public, and entered into a deed of compromise, sale, and repartition.

In this act *it* is to be found the following extracts:

Whereas, a litigation is now pending in the second district court of New Orleans, growing out of the partition of the succession of Samuel Packwood, in the suit entitled Emily Dorsey et als. vs. Theodore J. Packwood et als., numbered 15253 in the docket of suits in said district court, which embraces a contestation for the distribution of the
480 proceeds of a plantation in the parish of Plaquemines, known as the Bellechasse plantation, which was sold to effect a partition among the heirs of the late Samuel Packwood; and whereas, the widow of the late Samuel Packwood, to wit, Mrs. Mary A. C. Packwood, has intervened in said litigation, and claimed one-half of said proceeds as belonging to the community of acquets and gains existing by the laws of Louisiana between her and the said Samuel Packwood, which litigation is now pending on appeal before the supreme court of the State of Louisiana.

And whereas another litigation also exists, and is now pending in the second district court of New Orleans, in which Theodore J. Packwood, acting in his capacity of testamentary executor of the last will and testament of said Samuel Packwood, has brought suit for the unpaid instalments of the price of said Bellechasse plantation against James E. Zunts, the purchaser of the same, against which demand the purchaser of the same, the said James E. Zunts, pretends to set up various grounds of defence; and whereas, moreover, the said Zunts, for the purpose
481 of putting an end to said litigation, has proposed as a compromise and final settlement of the same to pay, in addition to what has already been paid, the sum of fifty thousand dollars in cash, and the further sum of fifty thousand dollars, payable on the first day of March, eighteen hundred and sixty five, with interest thereon at the rate of eight per cent. per annum, from the first day of March, eighteen hundred and sixty-four, for which the said Zunts shall furnish (the notes) in such sums as to suit the purpose of this partition, of William Stackhouse and H. Stackhouse, payable as before stated, with interest, which said William Stackhouse and H. Stackhouse have agreed to purchase the Bellechasse plantation by act of sale, to be executed concurrently with this agreement; said notes are to be drawn to the order of and endorsed by James E. Zunts, and to be secured by a first mortgage on said plantation; the said Zunts further agreeing to pay twenty-five hundred dollars in part payment of the counsel fees of said Theodore Packwood.

Now, therefore, the undersigned, the heirs and the representatives of the late Samuel Packwood and Mrs. Mary A. C. Packwood, all
482 acting either for themselves or by their duly authorized representatives, deeming it advisable to put an end to the respective litigations hereinbefore recited, and for the purpose of compromising and finally adjusting the same, do hereby agree and consent as follows, to wit:

First. It is agreed that the proposition made by the said James E. Zunts be accepted, subject, however, to the conditions and stipulations contained in the following clauses of this act of compromise: * * *

Now, therefore, for the purpose of carrying out fully, finally, and

legally all the conditions and agreements of compromise, they, the said appearers, in their said several capacities, do hereby consent and agree and bind themselves, their constituents, pupils, and their respective heirs, executors, and administrators, to abide by the same, and this their act of partition of their interests in the succession of the said Samuel Packwood in accordance with said agreement of compromise, the said James E. Zunts hereby consenting on his part to the provisions of said compromise so far as the same concerns him, and the confirmation to him of said plantation and slaves.

483 And whereas, since the sale and adjudication of said plantation and slaves to said James E. Zunts, as before stated, he, the said James E. Zunts, has agreed to sell and dispose of the same to Messrs. William Stackhouse and Heywood Stackhouse, and that the title should now be confirmed by said heirs direct to them, the said William Stackhouse and Heywood Stackhouse.

Now, therefore, in confirmation and execution of said agreement of compromise, they, the said heirs and representatives of the heirs of the said succession of the said Samuel Packwood, deceased, in their several capacities and to the extent of their several interests, moreover, declared that for the consideration and on the terms and conditions hereinafter expressed, they do, by these presents, grant, bargain, sell, convey, transfer, assign, and set over unto the said William Stackhouse and Heywood Stackhouse, who are here also present, accepting the same for themselves, their heirs and assigns, and acknowledging delivery and possession thereof, the said Bellechasse plantation and slaves, which is more fully described as follows, to wit:

484 That certain tract of land, cultivated as a sugar plantation, and known by the name of Bellechasse plantation, situate in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, at about five and a half leagues from the city of New Orleans, and measuring fifty-seven and a half acres front on said river by forty arpents in depth, bounded on the upper side by lands of Rosette Pupont, free women of color, and below by that of Juan Y. de Egana, together with all the buildings and improvements thereon, machinery, apparatus, agricultural implements, plows, carts, and all other movables belonging or appertaining to said plantation, and together with the following-described slaves, to wit:

(Here follows the description of the land, names, &c., of the slaves, which it is unnecessary to copy, and with reference to whom the following clause:)

All of the said plantation and movable property were transferred to and placed in the possession of James E. Zunts at the time of said adjudication to him on the said , and he has retained possession of them, and no guarantee or warranty is hereby given for said

485 slaves or movable property, and said slaves being mentioned simply as a description of the property originally purchased by said Zunts, and not for the purpose of conveying same by this act.

By this act Zunts was relieved of his debt to the Packwood heirs, and W. and H. Stackhouse became the owners of the Bellechasse plantation.

On the 15th February, 1865, W. and Stackhouse, before the same notary, declared that they were indebted unto James E. Zunts in the full sum of $50,000, and interest, as evidence of which they furnished their two promissory notes, drawn by them and endorsed by themselves, dated the first day of February, 1864, and made payable, each for the

sum of twenty-five thousand dollars ($25,000), on the first of February, 1866, to secure the payment of which the Stackhouses specially mortgaged and hypothecated the Bellechasse plantation.

These notes were not paid at maturity, and some time thereafter Zunts proceeded by the via executiva to enforce his mortgage. He was enjoined. The ground of injunction is that the notes given and the mortgage granted was without any consideration whatever; that
486 when they were given they were not, and that they are not now, indebted unto Zuntz in any manner whatever. They aver that shortly after the contract of compromise above referred to was entered into, Zunts induced them to execute the notes sued on, by assuring them that long before their maturity he would sell to them the slaves enumerated in the contract of partition, and would convey to them a good and valid title to said slaves, well knowing that he could not do so, as slaves had been abolished, and that he had no right, title, or interest in the persons who had formerly belonged to Packwood and himself, as slaves. To this petition of injunction there was filed a general and special denial of all the allegations contained in the petition.

The injunction issued on the 15th day of February, 1867. The case is now before us for the fourth time, twice on its merits and twice on a rehearing. It has taken more than 180 pages of printed pages to put before us the mass of testimony which was taken on the trial of the cause. I have read over this testimony, and in the whole of it I
487 do not find anything to substantiate the allegation in the petition that before the maturity of the notes sued on Zuntz would sell the slaves enumerated in the act of compromise, sale, and partition.

Heywood Stackhouse swears that they received no consideration for the notes, but he says he has no personal knowledge of the circumstances of the transaction; that his brother acted for the partnership in the matter; and William Stackhouse says, "They were given for the price of the slaves on the Bellechasse plantation when I purchased the land for $100,000," and the rest of the testimony refers to the value of the Bellechasse plantation at the time of the sale, and the reservation by Zuntz of some of the slaves thereon, and other matters relating to the sale of the plantation. Now all the persons named as slaves thereon were sold to the Stackhouses by the act by which they became the purchasers thereof, in so far as they could be sold, and all of them were mentioned simply as a description of the property originally purchased by Zuntz and not for the purpose of conveying the same by that act. This is Stackhouse's acknowledgment and contract as is shown by his own act passed before Madden, in the transaction of compromise, sale,
488 and partition. If there was any contest as to the consideration of this sale, I could understand how the question of slave consideration could be enquired into. But there is not. And if there had been the question would have been the Stackhouses and Packwood, who sold the property, and not between the Stackhouses and Zunts, who sold them nothing. There being no evidence to support the allegation that the consideration of the notes sued on by Zunts was a promise to sell slaves, I think the injunction should be dissolved.

I therefore concur in the opinion of the majority of the court rendered in May last, and I am instructed to say that the rehearing is refused.

Dissenting opinion of Chief Justice Jno. T. Ludeling, delivered Dec'r 15th, 1873.

WM. & H. STACKHOUSE
vs.
JAMES E. ZUNTS.

I dissent from the opinion of the majority of the court that the
489 notes which form the subject of this suit were not given for the price of slaves.

The evidence in the record convinces me that the notes were given for slaves.

On the tenth day of March, 1860, Bellechasse plantation, which belonged to the succession of Samuel Packwood, was sold to effect a partition in pursuance with an order of the 2d district court of New Orleans. With the plantation were sold the slaves on it, and James E. Zunts became the purchaser for the price of $250,000. Zunts paid $116,488.08, and was sued by the executor of Packwood for the balance due, upwards of $150,000. During the pendency of this suit for the price of said plantation and slaves, to wit, in January, 1864, Zunts and Wm. & H. Stackhouse entered into a verbal agreement by which the former agreed to sell, and he did actually deliver, unto the latter said plantation and slaves. Besides the oral evidence of this fact, the following is recited in the act of compromise and sale signed by the Packwood heirs, James E. Zunts, and Wm. and H. Stackhouse on the 13th January, 1865, to wit:

490 "And whereas, since the sale and adjudication of said plantation and slaves to said James E. Zunts as before stated, he, the said James E. Zunts, has agreed to sell and dispose of the same to William and Heywood Stackhouse, and that the title should now be confirmed by said heirs direct to them, the said William and Heywood Stackhouse; now, therefore, in confirmation and execution of said agreement of compromise, they, the said heirs," &c., "moreover declare that for the consideration, and on the terms and conditions hereinafter expressed, they do, by these presents, grant, bargain, sell, convey, transfer, assign, and set over unto the said William Stackhouse and Heywood Stackhouse, who are also present accepting the same for themselves, their heirs, and assigns, and acknowledging delivery and possession thereof, the said Bellechase plantation and slaves, which is more fully described as follows."

The land and slaves are there described. In pursuance to the terms of the compromise and sale the Messrs. Stackhouse paid $50,000 cash, and executed their notes, payable to the order of James E. Zuntz
491 and by him endorsed, all of which were delivered to the heirs of Packwood. These notes were identified with this act and were secured by a mortgage given in the act.

The notes sued on in this case are dated in January, 1864, and the mortgage to secure their payment was executed in February, 1865.

It is proved that the compromise between Zunts and the heirs of Packwood was that they should receive the price for which Zunts had agreed to sell the plantation; that price is fixed in the act of compromise and sale of January, 1865, at $100,000, as already stated, and that is all that the heirs of Packwood ever received in discharge of the debt due to them by James E. Zunts. I am bound, therefore, to believe that James E. Zunts deliberately deceived and defrauded the heirs of Packwood, or that the notes sued upon formed no part of the price of the

plantation sold in 1865. Charity would incline me to believe the latter, and the evidence outside of the notarial act of compromise and sale greatly preponderates in favor of that hypothesis.

But it is said that the statement in the act of sale that slaves
492 were sold is qualified by the excluding clause. What is that excluding clause? "And no guarantee or warranty is hereby given for said slaves or moveable property, and said slaves being mentioned simply as a description originally purchased by said Zunts, and not for the purpose of conveying the same by this act."

The testimony shows that this clause was inserted at the instance of the counsel to whom the act was presented for examination after it had been prepared by the notary. That counsel testified that he informed the parties that at the date of that act, January, 1865, persons could not be sold as slaves in Plaquemines Parish.

This testimony, taken together with the excluding clause, satisfies me that the slaves had been previously sold in 1864, and that they were not to be considered as sold or "conveyed by this act."

If slaves had not been sold by Zunts to the Messrs. Stackhouse, why the necessity of inserting in the act that "no guarantee or warranty is given for said slaves"?

It would be absurd to exclude the warranty of title to some-
493 thing which had never been sold. This clause would be meaningless if slaves had not been sold, and it is a safe rule of construction to construe an act so as to give effect to every part of it if possible.

I think the judgment of the court erroneous further in allowing twenty per centum damages. On the former trial this court was unanimous in sustaining the injunction, and at this trial it is dissolved by a bare majority of the judges. I cannot think this a proper case for mulcting the plaintiffs in exemplary damages for abusing the remedy of injunction.

I concur in the above dissenting of opinion of the chief justice.
(Signed) R. K. HOWELL.

Submission of cause.—Extract from the minutes, April term, 1878.

NEW ORLEANS, *Monday, June 3d*, 1878.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

494 By consent of counsel here present, in open court, the cause is submitted upon the pleadings and the evidence and printed briefs.

Order cause referred to master, &c.—Extracts from minutes of 10th *June*, 1878.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

This cause came on to be heard at this term, and was argued by counsel; on consideration whereof, it is ordered that the matter be

referred to J. W. Gurley, master in chancery, to take evidence and report as to the amount of money defendants actually advanced on the mortgage notes of 1873.

NOTE BY CLERK.—Petition for a rehearing, filed June 13th, 1878, is lost or mislaid, and cannot be found after due and diligent search made.

495 *Motion and order modifying order of reference of 10th June, 1878.—Extract from minutes of June 14th, 1878.*

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

On motion of Kelly and Lazarus, solicitors for respondents, it is ordered that the order of reference to J. W. Gurley, master, herein entered on the 10th instant, be modified so as to direct said master to report from the evidence already taken, and any further evidence that may be offered before him, and report as to the amount of money advanced on the mortgage notes of 1873, and shall report his findings within 3 days.

Motion and order—ex parte order of June 14th, 1878, set aside.—Extract from minutes of 17th June, 1878.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

On motion of Richardson & Magruder, solicitors for complainant, and on suggesting to the court that upon the ex parte motion of re-
496 spondent's counsel this court has so modified its order of reference to J. W. Gurley, master in chancery, rendered on the 10th June, 1878, as to require him to report his findings within three days from the 14th day of June; on further suggesting to the court that complainants have been notified to appear before the said master, Gurley, and produce their evidence on this the 17th day of June at 2 o'clock p. m., and that complainant's witnesses are in the parish of Plaquemines, and cannot be brought to testify at the hour fixed, and that the enforcement of said ex parte order will work a denial of justice, it is ordered that ten days from date hereof be allowed complainants to produce their testimony, and that said ex parte orders be rescinded and set aside.

Order rehearing refused.—Extract from minutes of 19 June, 1878.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

For reasons this day orally assigned, the application for a re-
497 hearing herein is refused; and it is ordered that J. W. Gurley, to whom it was referred to examine and report upon the amount advanced or due on the mortgage notes of 1873, in the pleadings mentioned, report thereon immediately upon the evidence on file in the cause.

Master's report on amount due on notes.—Filed June 20th, 1878.

To the hon. the circuit court of the United States for the 5th circuit and district of Louisiana:

S. W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

This cause was referred to the undersigned master with directions to ascertain, from the evidence in the record, the amount of money advanced or due on the mortgage-notes executed in 1873.

The master has given to the investigation in this matter all the attention which the limited time allowed to him would permit.

The mortgage executed in February, 1873, by Mrs. Stackhouse,
498 as widow in community, and as tutrix of her minor children.

The only testimony by which the question submitted is to be determined is that of Frederick Ernest. He has furnished detailed accounts of the amount of supplies furnished on account of the Cedar Grove plantation, and of the moneys which from different sources has come into his hands. It appears from his testimony and the accounts that—

Ernest & Co. furnished supplies to amount of	$10,282 57
And paid out for other items	135 95
" " " " " "	11,000 00
Total	$21,418 52
Mrs. Stackhouse owed for supplies furnished in 1872, & secured	5,438 000
	$26,856 52
Stackhouse paid on notes of W. Stackhouse	$10,878 13
Cash & note of Sawyer	2,625 17
Sales of produce	3,777 78
	$17,331 08

Ernst & Co., holding notes of W. Stackhouse, discounted by them for Mrs. Stackhouse for $11,000, not having been paid at maturity, collected on the same, as it is fair to infer from the testimony and the items
499 of the account, $10,818.13, leaving a balance due of $181.87, which amount was paid by note and cash of Sawyer of $2,675.17, leaving a balance of $2,493.30. From this amount a further deduction was made of $135.95 for commissions for negotiating note, leaving a balance of $2,357.35.

To this amount add $3,777.78, proceeds of sale of produce, and we have	$6,135 13
Deduct am't of mortgage-note given for supplies	5,438 00
Leaving	$697 13
From the am't of supplies, viz	$10,282 57
Deduct the above balance of	697 13
And there is left due on the notes	$9,585 44

Respectfully submitted,
(Signed) J. W. GURLEY,
Master, &c.

The master with respect asks that he be allowed $50 in compensation of his services.

J. W. G.

Entry in chancery order book of filing of master's report.—June 20th, 1878.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

The parties in interest are notified that the master in chancery
500 has this day filed his report on amount due on notes.

Exceptions to master's report.—Filed July 8th, 1878.

United States circuit court, 5th circuit and district of Louisiana.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS.

Exceptions taken, by the complainant herein, to the report of J. Ward Gurley, master, to whom the said cause stands referred, in pursuance of the decree made on the hearing of this cause, bearing date the 10th day of June, 1878:

1ST EXCEPTION. The said master was instructed to report on the amount of supplies advanced on the mortgage-notes of 1873 in favor of Ernest & Co., whereas the said master has reported as—

Paid for other items	135 95
" " " "	11,000 00
Making a total of	$11,135 95

paid for "other items" than supplies.

2D EXCEPTION. The said master was instructed to ascertain and report the amount of supplies advanced on the mortgage-notes of
501 1873, whereas the said master has reported "other items" and other amounts advanced, and other monies loaned to Mrs. S. F. Stackhouse individually, in the year 1872, anterior to the date of the mortgage-notes given by Mrs. S. F. Stackhouse, tutrix, in 1873, by which it is made to appear that her indebtedness in her said capacity as tutrix, for supplies advanced to minor children's undivided interest in Cedar Grove plantation, is much greater than it really is.

3D EXCEPTION.—The said master has reported, and the testimony of F. Ernest, of Ernest & Co., mortgagees, shows that one of the mortgage notes of 1873, for $54.38, has been paid; that besides this amount there have been on account of said mortgage notes of 1873, proceeds of Sawyer's note for the purchase of machinery on Cedar Grove in 1873, $2,675.17, and proceeds of crops of 1873, $3,777.78, making a total of $11,890.95 paid on account of said mortgage notes of 1873, while the total amount of supplies advanced on said mortgage note is shown to be $10,282.57; and if the total amount of supplies advanced in 1873 be compared
502 with the amounts unpaid on account of the mortgage notes of 1873, there would remain a balance of $1,608.38 due from said Ernest & Co. to Mrs. Sarah F. Stackhouse, tutrix. Whereas the said

master, by crediting the said mortgage note of $5,438 for the year 1873, given by Mrs. Stackhouse in her said representative capacity, to the individual account of Mrs. Stackhouse in 1872, and crediting said Ernest & Co. with advances and "other items" in 1872, and by allowing said Ernest & Co. $135.95 for commissions for "negotiating," finds a balance due for supples on the mortgage notes of 1873 of $9,585.44.

Wherefore complainant excepts to the said master's report and prays for an appeal therefrom to the judgment of this honorable court.

(Signed) RICHARDSON & MAGRUDER,
Solicitor' for Complainant.

Entry in chancery order book July 8th, 1878.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

503 The complainant herein has this day, by his solicitors, Richardson & Magruder, filed his exceptions to the master's report, filed June 20, 1878.

Motion and order cause fixed for hearing on exceptions to master's report.—Extract from minutes of 9th Dec'r, 1878.

November term 1878.

NEW ORLEANS, *Monday, December 9th*, 1878.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

On motion of Kelly and Lazarus, of counsel for defendants, it is ordered that said cause be set down for hearing on exceptions to master's report on Saturday, 21st instant, at 11 a. m., and that plaintiff, through his counsel, be notified thereof.

Order, cause continued.—Extract from minutes of 21 Dec'r, 1878.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

504 By consent of counsel the hearing of the exceptions to the master's report is continued to the 4th day of January, 1879, at 11 o'clock a. m.

Order, cause continued.—Extract from minutes of 4th January, 1879.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

By consent, the hearing on the exceptions to the report of the master is continued to 18th instant, at 11 a. m., and it is ordered by the court that a petition for a rehearing herein this day presented be filed and submitted.

Petition for a rehearing.—Filed January 4th, 1879, by order of court.

United States circuit court, district of Louisiana. In chancery.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

505 To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana.

The undersigned, of counsel for complainant herein, very respectfully ask the leave of the court to file this petition for a rehearing on the merits of this case.

I.

We understand the decision of the court to be based upon the decision in the case of Norton vs. Jamison, 23 Ann., 103; and that your honors found that in this matter the judgment in the case of Stackhouse vs. Zunts was not a judgment against the widow and heirs of Haywood Stackhouse, and that the recording of said judgment did not make it operate as a mortgage against the property belonging to the widow and heirs of Heywood Stackhouse.

We do not propose to weary the court by attempting to reopen the discussion upon that point, but merely to call the attention of your honors to the fact that it appears from the record in the case of Stackhouse vs. Zunts that that point and defence was duly raised before the supreme court of Louisiana by counsel for the widow and heirs of
506 Heywood Stackhouse and duly passed upon by said supreme court exactly to the reverse of the conclusions reached by your honors.

The record in the case of Stackhouse vs. Zunts has been offered in evidence in this case, and from it it appears that after the final decree of the supreme court affirming the judgment against W. and H. Stackhouse in solido had been rendered, a petition for a rehearing of the case was filed by Mr. McCaleb on behalf of the widow and heirs of Heywood Stackhouse, in which he urged the nullity of the judgment against them, they not being parties to either the judgment or the suit, and asked to have that nullity declared by the court on that ground; that petition was filed on the first day of November, 1873, and the supreme court held it under advisement until the 1st day of December, 1873, when it rendered a judgment refusing the rehearing prayed for, and consequently refused to decree that the judgment was a nullity as against the widow and heirs of H. Stackhouse; and consequently, also, declared that it was a good judgment as to them, because they were on the record as appellees from it.

507 We accompany this with a copy of that petition for rehearing, to which we beg to call the attention of the court from page 9 to page 25; it will be seen that the point here at issue is sharply made in several places; we quote:

"All the proceedings, trial and judgment took place notwithstanding the death of Haywood Stackhouse, against him eo nomine, and in no-wise against us, his heirs, or representatives." (Page 19.)

"But Zunts was seeking no such end; he was trying the case against a dead man only. We have a right to say so, for he proceeded to ob-

tain a judgment against that dead man and was content. He made no attempt whatever to obtain a judgment against us, nor has he, in fact, obtained one." (Page 10.)

"You have only affirmed a judgment rendered against a dead man after his death; and we stand before you only as third parties, who have appealed from a judgment rendered against another." (Page 20.)

"There is no judgment against us." (Page 22.)

Now, upon this petition, your honors will see that all the law relied upon by our opponents and all the authorities quoted by them
508 were used by Mr. McCaleb to have the judgment declared a nullity as against the widow and heirs of H. Stackhouse, and even the case of Norton vs. Jamison was relied upon and quoted (page 13), but the supreme court refused to declare the judgment a nullity as against said widow and heirs, and hence declared that it was good as against them, and this judgment of the supreme court refusing to decree the nullity of said judgment as against said widow and heirs is final as against them and has the force of res adjudicata, for they cannot bring an action of nullity on the same grounds. (Code of Practice, 609.)

We submit that if the judgment is a final and effective one as against the widow and heirs of H. Stackhouse, as our supreme court has decreed it is, it is final and effective as to their property when duly recorded, and there is no question that that has been done.

The authority of Norton vs. Jamison and the doctrine there enunciated must remain as good law and binding upon the courts in all cases but this, which, as we have shown, has been specially adjudicated otherwise.

509 The equities are entirely with complainant. It is shown Zunts' judgment was duly recorded before respondents' alleged mortgage was made. They are therefore properly and legally chargeable with full knowledge thereof, and could take no rights or actions to the prejudice of Zunts, whereas they here attempt to avail themselves of their own laches, profit by their knowledge of Zunts' debt, and seek equity to consummate their illegal plan of evading the same, which their authors could not do.

Even were it the case Zunts' judgment was not recited on the certificate of mortgages when they pretend to have made their advances, they are bound by the recordation, with recourse against the mortgage officer for his neglect.

II.

But so far as the heirs of H. Stackhouse are concerned, we contend that the property mortgaged by them to the defendants was never theirs to mortgage, but was the property of their father, H. Stackhouse, against whom Zunts had his judgment. These heirs were minors, and they could not accept a succession through their tutrix or by the operation of law, except with the benefit of inventory (C. C., 352), and that only transferred to them the property of their father after his debts
510 were paid (C. C. 1032, 1054), and it was the duty of their tutrix to administer upon the estate of the deceased and to pay its debts. (See Waters vs. Mercer, 4 La., 14.)

It is admitted that Zunts was at least an ordinary creditor of H. Stackhouse for the amount of his judgment; then we contend that the minor heirs of Stackhouse never became the owners of the plantation in question, and consequently never could have mortgaged it to defendants. Being only beneficiary heirs, they took from their father's succession only what was left after the payment of his debts, and as they

have never been paid, as is in evidence here, it follows that the minor heirs took nothing, and that the pretended mortgage made for them by their tutrix is an absolute nullity, worth no more than a mortgage given by Smith upon the land of Jones.

This has been frequently held by our supreme court to be good law. In the case of State vs. Judge of Probates for Parish of St. Jean Baptiste (17 Louisiana Reports, 500), the relator was a tutor of minor children, and prayed for an order to sell some of their prop-
511 erty, which sale had been recommended by a family meeting. The judge refused to allow the sale, and the relator asked for a mandamus to compel him to permit it. The supreme court declined to issue the writ, and said: "Until a succession accepted with the benefit of inventory has been administered upon and liquidated, it must of necessity remain under the control and supervision of the court of probates of the parish in which it was opened."

No one will deny that it the duty of the court of probates to see that the debts of the deceased are paid before allowing mortgages to be made upon his property to pay debts of his living children contracted since his death.

In the case of Hall vs. Parks (9 Rob. Rep., 140, foot of page) the supreme court says: "The minors, therefore, being considered as beneficiary heirs, have never acquired that absolute interest in the property of the estate which would place said property under the exclusive control and administration of their tutor, as all that they could be entitled to after the settlement of the estate would be the surplus that might remain after satisfying the debts of the succession."

512 It was no surplus of the estate of their father which was mortgaged for the benefit of the minors Stackhouse, for their father's debts remained unpaid.

And in the case of Parks vs. Patten (9 Rob. Rep., 169) they again say: "Whenever a succession is accepted with benefit of inventory it is to be administered under the authority of the court of probates."

It is plain that the word "administered" does not mean that the property of the succession can be mortgaged to pay present and future debts of the heirs before the creditors of the succession are paid.

As a succession opened in favor of minors can be accepted for them only with benefit of inventory, it cannot be said to be their property, and does not legally come into their possession until it has been duly administered, when whatever may remain after payment of debts will fall under the administration of their tutor." (Self vs. Morris, 7 Rob. Rep., 24.)

"Whenever a succession is accepted with benefit of inventory, and minors cannot accept in any other way, it must be administer as a vacant estate." (Self vs. Morris, 7 Rob. Rep., 24.)

513 All of which is respectfully submitted.

HORNOR & BENEDICT,
Of Counsel.

New Orleans, December 27, 1878.

Order exceptions to report of master continued.—Extract from minutes of January 18, 1879.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET AL. } No. 8116.

The exceptions to the report of the master were called, and, after hearing counsel, continued to the 23d instant at 11 a. m.

Order exceptions to report of master continued.—Extract from minutes of 23d January, 1879.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

For want of time, it is agreed by counsel to continue the exceptions to the master's report till 29th instant at 11 o'clock a. m.

514 *Order exceptions to report of master reassigned.—Extract from minutes of 29th January*, 1879.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

For want of time, it is, on motion of Richardson & Magruder, esq'res, ordered that the exceptions to the master's report be reassigned for hearing on February 5th, 1879, at 11 a. m., and that Messrs. Hornor & Benedict and Kelly and Lazarus be notified.

Order exceptions to report of master lay over.—Extract from minutes of 5th February, 1879.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

Ordered, that the exceptions to the master's report lay over till to-morrow at 11 a. m.

Hearing and continuance of petition for a rehearing.—Extract from minutes of 6th February, 1879.

515 SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

The application for a rehearing of this cause came on to be heard, and having been argued by Horner & Benedict and Richardson & Magruder for complainant, and Kelley & Lazarus for defendants, the further hearing is continued till Monday, 10th instant, at 11 a. m.

Order application for rehearing submitted.—Extract from minutes of 10 February, 1879.

SILAS W. SAWYER
vs.
R. R. MONTGOMERY ET ALS. } No. 8116.

The application for a rehearing came on further to be heard, and after argument the court took time to consider, ten days being allowed counsel to submit briefs.

Decree entered & filed April 16, 1879.

United States circuit court, district of Louisiana. In chancery.

SILAS W. SAWYER
vs.
RICHARD MONTGOMERY ET ALS } No. 8116.

This cause came on to be heard upon the bill, answer, replication, exhibits, and testimony in the record, and upon due consideration thereof it is ordered, adjudged, and decreed that the complainant, Silas W. Sawyer, be decreed to be the purchaser in good faith and legal owner and proprietor of a certain tract of land with all the improvements thereon, and all rights, ways, privileges, and appurtenances thereunto belonging situate in the parish of Plaquemines, in this State, on the right bank of the Mississippi River, formerly cultivated as a sugar plantation, known as the New Hope plantation, and is at a distance of about twenty-three miles below the city of New Orleans, measuring thirty-four arpents front on said river by forty arpents in depth, bounded above by the plantation of Octave Reggio and below by the lands of René Sarpy, together with all the buildings thereon, sugar-house, machinery, agricul-
517 tural implements, horses, mules, cattle, and carts, and all other appurtenances thereto belonging or appertaining.

It is further ordered, adjudged and decreed, that the mortgage granted upon the above-described property by Sarah F. Brooks, widow of Haywood Stackhouse, and as attorney in fact of Lillia A. Stackhouse Byrant, and as natural tutrix of her minor children, Herbert, Mabel, Blanche, and Maud Stackhouse, by act before Algernon Sidney Beck, notary public, dated New Orleans, 6th February, 1873, is hereby declared null and void, and of no effect as against said Silas W. Sawyer, or against his hereinabove described property.

It is furthered ordered, adjudged and decreed, that a writ of injunction do issue herein against Richard R. Montgomery, John S. Leng, and Jonathan Ogden, commercial partners under the name of Leng & Ogden, and against the United States marshal for the district of Louisiana, their agents and attorneys, commanding them to desist from proceeding under the writ of seizure and sale issued in the suit of Montgomery et als. vs. Stackhouse et als., No. 8028 of the docket of said court, against said Silas W. Sawyer, and against said hereinabove-described property.

518 It is further ordered, adjudged and decreed, that the defendants pay the costs of these proceedings.

April 16th, 1879.

(Signed) EDWARD C. BILLINGS,
Judge.

Motion for appeal and order.—Entered and filed April 18*th*, 1879.

In the circuit court of the United States for the district of Louisiana.
In equity.

SILAS W. SAWYER
vs.
RICHARD R. MONTGOMERY ET ALS. } No. 8116.

On motion of Kelly and Lazarus, solicitors for Richard R. Montgom-

ery and Leng and Ogden, defendants, and on their tendering the bond of said defendants with Hugh W. Montgomery as surety in the sum of $500 (five hundred dollars) conditioned as the law directs. It is ordered that said bond be approved and accepted, and that the said defendents be allowed an appeal from the final decree herein rendered on the
519 sixteenth of April, 1879, returnable to the Supreme Court of the United States at its next term, beginning on the second Monday in October, 1879.

Appeal bond.—Filed April 18th, 1879.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Richard R. Montgomery and Leng and Ogden, as principals, and Hugh W. Montgomery, as surety, are held and firmly bound, joint'y and severally, unto Silas W. Sawyer, in the sum of five hundred dollars, lawful money of the United States, to be paid to the said Silas W. Sawyer, his heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs and administrators, firmly these presents. Sealed with our seals and dated the eighteenth day of April, in the year of our Lord eighteen hundred and seventy-nine.

Whereas the said Richard R. Montgomery and Leng and Ogden, have on the eighteenth day of April, 1879, taken an appeal to the Su-
520 preme Court of the United States, from and to reverse the decree herein rendered on the sixteenth day of April, 1879, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Silas W. Sawyer vs. Richard R. Montgomery and Leng and Ogden, No. 8116 of the docket thereof:

Now, the condition of the above obligation is, that if the above bounden Richard R. Montgomery and Leng and Ogden shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtne.

(Signed) RICHARD R. MONTGOMERY, [SEAL.]
By KELLY AND LAZARUS.
(Signed) LENG AND OGDEN, [SEAL.]
By KELLY AND LAZARUS
(Signed) HUGH W. MONTGOMERY. [SEAL.]

UNITED STATES OF AMERICA.
District of Louisiana, ss:

Personally appeared Hugh W. Montgomery, who, being duly sworn, deposes and says, that he is the surety on the within bond, that
521 he resides in the city of New Orleans, and is worth the full sum of five hundred dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) HUGH W. MONTGOMERY.

Subscribed and sworn before me this 18th day of April, 1879.
(Signed) K. LOEW,
Commissioner U. S. Circuit Court District of Louisiana.

Motion for appeal and order.—Entered and filed April, 23d, 1879.

United States circuit court, district of Louisiana. In equity.

SILAS W. SAWYER
vs.
RICHARD R. MONTGOMERY AND LENG AND Ogden. } No. 8116.

On motion of Kelly and Lazarus, solicitors for John S. Leng and Jonathan Ogden, composing the commercial firm of Leng and Ogden, and of Richard R. Montgomery, defendants, and upon their now tendering the bond of said defendants in the sum of five hundred dollars, conditioned as the law directs, with Hugh W. Montgomery, as
522 surety, it is ordered that the said bond be accepted, and that the said defendants be allowed an appeal from the final decree herein rendered on the 16th of April, 1879, returnable to the Supreme Court of the United States at its October term, 1879.

Appeal bond.—Filed April 23d, 1879.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, John S. Leng and Jonathan Ogden, composing the commercial firm of Leng and Ogden, and Richard R. Montgomery, as principals, and Hugh W. Montgomery, as surety, are held and firmly bound, jointly and severally, unto Silas W. Sawyer, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Silas W. Sawyer, his heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the 23d day of April, in the year of our
523 Lord eighteen hundred and seventy-nine.

Whereas the said John S. Leng, Jonathan Ogden and Richard R. Montgomery, having on the 23d day of April, 1879, taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered on the sixteenth day of April, 1879, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Silas W. Sawyer vs. Richard R. Montgomery, and Leng and Ogden, a commercial firm composed, of John S. Leng and Jonathan Ogden, No. 8116 of the docket thereof:

Now, the condition of the above obligation is, that if the above bounden John S. Leng, Jonathan Ogden and Richard R. Montgomery shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) JOHN S. LENG, [SEAL.]
By his solicitors, KELLY AND LAZARUS.
" JONATHAN OGDEN, [SEAL.]
By his solicitors, KELLY AND LAZARUS.
" RICHARD R. MONTGOMERY, [SEAL.]
By his solicitors, KELLY AND LAZARUS.
" HUGH W. MONTGOMERY. [SEAL.]

524 UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared Hugh W. Montgomery, who, being duly sworn, deposes and says, that he is the surety on the within bond, that he resides in the city of New Orleans, La., and is worth the full sum of five hundred dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) HUGH W. MONTGOMERY.

Subscribed and sworn before me this 23d day of April, 1879.

(Signed) K. LOEW,
Commissioner U. S. Circuit Court District of Louisiana.

Agreement relative to appeal.—Filed August 18th, 1879.

In the hon. the circuit court of the United States, district of Louisiana.

SILAS W. SAWYER
vs.
RICH'D R. MONTGOMERY AND LENG & OGDEN. } No. 8116.

525 It is agreed between Hornor & Benedict, solicitors for Silas W. Sawyer, complainant, and Kelly & Lazarus, solicitors for Rich'd R. Montgomery and Leng and Ogden, respondents herein, as follows:

That as record No. 4019 of the supreme court of La., offered in evidence herein by complainant and respondents, contains a large mass of testimony and incidental proceedings in nowise appertaining or necessary to a decision in this case, and with a view of curtailing the record and to save costs, it is argued—

That the pleadings and judgments in the lower and supreme courts, in the cases of James E. Zunts vs. W. and H. Stackhouse, and W. and H. Stackhouse vs. Jas. E. Zunts, are only to be transcribed in the record of appeal herein, and also the petitions, motions, bonds, orders and services thereof, making or referring to parties made pendente lite, in the lower and supreme courts; also including the printed petition for rehearing in the supreme court and the decision thereon by said court.

That all other motions, continuances, commissions to take testimony and returns thereon and thereto, all other rules and ex parte orders,
526 all testimony, bills of exceptions, interlocutory orders, copies of acts or private writings, unless directly referred to in the pleadings or made part thereof, are to be omitted from the transcript of appeal herein, provided that either complainant or respondent may at any time supplement the transcript with such additional parts of the record as may be necessary or proper at the expense of the appellant.

(Signed) KELLY & LAZARUS,
Solicitors for Montgomery et als.

(Signed) HORNOR & BENEDICT,
Solicitors for Complainant.

527 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify, that the

foregoing 526 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Silas W. Sawyer vs. Richard R. Montgomery and Leng and Ogden, No. 8116 of the docket of said court, with the exception of such irrelevant testimony, incidental proceeding, commissions, &c., contained in record No. 4019 supreme court of La., which have been omitted under the agreement of counsel herein filed on 18th August, 1879, and the petition for a rehearing filed June 13th, 1878, which is lost or mislaid, and cannot be found after due and diligent search.

Witness my hand and the seal of said court, at the city of New Orleans, this 15th day of September, A. D. 1879.

Fifteen words (15) erased "null."

F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 15th day of September, A. D. 1879.

[SEAL.] EDWARD C. BILLINGS.

(Indorsement on cover:) No. 1016. Richard R. Montgomery & John S. Leng & Jonathan Ogden, as Leng & Ogden, appellants, vs. Silas W. Sawyer. Louisiana C. C. U. S. Filed 23rd October, 1879.

Supreme Court of the United States.

No. 1016.

RICHARD R. MONTGOMERY, AND JOHN S. LENG AND JONATHAN OGDEN, AS LENG & OGDEN,
APPELLANTS,

VERSUS

SILAS W. SAWYER.

Brief for Appellants.

HENRY B. KELLY,
HENRY L LAZARUS,
of counsel.

December. 1879.

F. F. Hansell, Bookseller, Stationer & Printer, 30 and 36 Camp Street.

Supreme Court of the United States.

No. 1016.

RICHARD R. MONTGOMERY, AND JOHN S. LENG AND JONATHAN OGDEN, AS LENG & OGDEN,
APPELLANTS,

VERSUS

SILAS W. SAWYER.

Brief for Appellants.

Statement of the Case.

On the 15th of December, 1876, Richard R. Montgomery, of Philadelphia, and the commercial firm of Leng & Ogden, of New York, exhibited their bill (Trans. p. 77), in suit No. 8028 of the docket of the Circuit Court of the United States, for the District of Louisiana, against Mrs. Sarah F. Stackhouse, of the parish of Plaquemines, La., in her own right as widow in community of Haywood Stackhouse, deceased, and as natural tutrix of the minor children of the marriage, and against Mrs. Lillia A. Bryant, wife of J. W. Bryant, of the city of New Orleans. The bill averred that the complainants were the holders and owners of two certain promissory notes for the aggregate amount of nine thousand five hundred and sixty-two dol-

lars, bearing interest at the rate of eight per cent per annum from date, and dated at New Orleans, February 6, 1873, drawn to the order of and indorsed by the said Mrs. Sarah F. Stackhouse, payable twelve months after date; that the payment of said notes at maturity was secured by mortgage on a plantation in the parish of Plaquemines, known as "Cedar Grove" Plantation, and that the said notes and mortgage were executed by the said Mrs. Stackhouse, acting in her own right as widow in community of Haywood Stackhouse, and as natural tutrix of her minor children, and also as attorney in fact of the said Mrs. Bryant, being authorized to act for the minors in that behalf by the advice and upon the recommendation of a family meeting duly convened for that purpose; that the consideration of said notes and mortgage was the indebtedness of the said Mrs. Stackhouse, her minor children, and the said Mrs. Bryant, who were the owners of said Cedar Grove plantation, to the firm of Ernst & Co., of New Orleans, for moneys and supplies advanced to enable them to carry on and cultivate the plantation; that the mortgage was in favor of Ernst & Co., and of any future holder or holders of the notes; and that the notes held by complainants were due and unpaid.

Upon the filing of the bill, and in accordance with the prayer thereof, and upon the production of the notes and of the authentic act of the mortgage, importing confession of judgment, and containing the pact *de non alienando*, a writ of seizure and sale was issued against the mortgaged property. Trans. p. 81.

For reasons which will be hereafter explained the writ as prayed for ran against *an undivided half* only of the property, though the mortgage upon its face bore upon the whole of it.

After the issuance of the writ, to wit, on the 27th of February, 1877, Silas W. Sawyer exhibited his bill in the same court (Trans. p. 1), in the suit No. 8116, for an injunction against it. Sawyer's bill avers in substance that he is the possessor and purchaser in good faith of the Cedar Grove plantation; that

he purchased it at a sale made by the sheriff of the parish of Plaquemines on the 6th of March, 1875, by virtue of a writ of seizure and sale from the Second Judicial District Court for the parish of Plaquemines, at the suit of James E. Zunts vs. Sarah F. Brooks, widow of Haywood Stackhouse, in her own right and as tutrix, et al., No. 2270 of the docket of said court; that said order of seizure and sale was issued to enforce a balance due on a judgment in favor of said Zunts, rendered in the suit of William & Haywood Stackhouse vs. James E. Zunts, by the Fifth District Court for the parish of Orleans, numbered 18,850 of the docket of said court; that the judgment in said suit was duly recorded in the office of the Recorder of Mortgages of the parish of Plaquemines *on the 17th of April, 1872*, and that said "recordation *operated as a judicial mortgage* on the property of said William & *Haywood* Stackhouse, situated in the parish of Plaquemines," among which was the Cedar Grove plantation; that this judgment was affirmed on appeal by the Supreme Court; that *pending said appeal* Haywood Stackhouse died," and that Mrs. Stackhouse, natural tutrix, etc., and Mrs. Bryant became parties to the suit pend ng that appeal.

The bill goes on to aver, in substance, that Richard R. Montgomery and Leng & Ogden, claiming to be the owners of the mortgage notes before described, had sued out executory process upon them in the suit No 8028 of the docket, and that the marshal under their writ had seized and would proceed to advertise and sell an undivided half of said plantation, unless restrained by order of court; that the mortgage claimed by the complainants in said executory proceedings, No. 8028, is null and void, because the said Mrs. Stackhouse was without power or authority in law to mortgage the property of the succession of Haywood Stackhouse, without an order of the parish court, granted after the advice and consent of a family meeting, and could only mortgage for the purpose, consideration, and amount authorized by the family meeting; and that the mortgage given to secure the notes alleged to be held by

the defendants was given to secure an alleged indebtedness of fifteen thousand dollars of the succession of Haywood Stackhouse to Ernst & Co.; whereas a family meeting advised a mortgage only for the purpose of securing supplies and means necessary for working said plantation, said supplies and means to be furnished by said Ernst & Co.; that complainant is informed and believes that Ernst & Co. declined to furnish supplies and means sufficient to cultivate the plantation for the year 1873; that the supplies furnished fell far short of the necessities of the plantation, and of the amount claimed by complainants in the suit of Montgomery et al. vs. Stackhouse et al., as the holders of the aforesaid notes, and that Mrs. Stackhouse, tutrix, etc., was compelled to apply to other merchants for funds to cultivate the plantation for the year 1873, and that complainant is further informed and believes that Ernst & Co. were more than repaid for their advances by the proceeds of the crop consigned to them and by the proceeds of the sale of a steam-train, amounting to $3000, which it is averred should have been credited to the mortgage indebtedness; that Montgomery and Leng & Ogden did not acquire the notes held by them respectively until after maturity, and the mortgage is absolutely null so far as it purports to affect the interest of Mrs. Bryant in the property, because she was at the time of the execution of the mortgage a married woman, and her interest in the property was paraphernal, and the formalities required by articles 127 and 128 of the Civil Code were not observed.

Upon the filing of this bill a restraining order was granted, which, by consent of parties, was to stand as an injunction *pendente lite.*

Montgomery and Leng & Ogden filed separate answers, Transcript pp. 49, 55, but similar in substance in all respects, except that while Montgomery admits that the note held by him was acquired shortly after maturity, Leng & Ogden aver that they acquired the note held by them before maturity.

The averments of the answers, material to be stated here, are, in substance, that Cedar Grove plantation, upon which the mortgage claimed by respondents rests, was acquired by William and Haywood Stackhouse jointly, in or about the year 1856, and continued to be held by them in common until the *18th of December, 1869, when Haywood Stackhouse died*, and his undivided interest passed by operation of law to Mrs. Stackhouse, widow in community, and his children, sole heirs, the said Mrs. Bryant and the minors represented by Mrs. Stackhouse, as natural tutrix, who continued to hold the property in common with William Stackhouse until the *17th of May, 1872*, when, by the effect of a partition of this and other property previously held in common between them, Mrs. Stackhouse and her children, the minors and Mrs. Bryant, became the sole owners of Cedar Grove plantation.

Respondents aver that the complainant herein bases his claim to title to the said plantation on the recording, on the *17th of April, 1872*, of a judgment against William & *Haywood Stackhouse, eo nomine*, and on certain proceedings taken by James E. Zunts, the owner of the judgment, to enforce against the widow and heirs of Haywood Stackhouse by hypothecary action, an alleged judicial mortgage, which he claimed to have been created against said widow and heirs by the recording of said judgment *against Haywood Stackhouse* on the 17th of April, 1872; that said judgment was rendered in a suit brought by William and Haywood Stackhouse, in the life-time of the latter, against James E. Zunts, to enjoin him from prosecuting a writ of seizure and sale against certain property owned by them in common, other than the Cedar Grove plantation; to wit: the Bellechasse plantation, against which Zunts claimed to hold a conventional mortgage, under which he took out executory process, which was enjoined by William & Haywood Stackhouse, and that upon trial the injunction was dissolved, with judgment in favor of the defendant, Zunts, against them for damages at the rate of twelve per cent upon the amount of the

writ enjoined; that from this judgment William & Haywood Stackhouse appealed to the Supreme Court, the appeal being made returnable in January, 1869; that pending this appeal, to wit: *on the 18th of December, 1869, Haywood Stackhouse died*, and that thereupon the widow and heirs were made parties to the suit in his stead; that the judgment appealed from was reversed and annulled, and the cause remanded to the Fifth District Court to be tried *de novo;* that the case was accordingly tried anew in the District Court, and that on the 20th of February, 1872, long after the death of Haywood Stackhouse, which occurred in December, 1869, that Court rendered the judgment, the recording of which it is claimed created a judicial mortgage against the property of the widow and heirs of Haywood Stackhouse; that that judgment is not a judgment *against the widow and heirs*, but is a judgment against William Stackhouse and against *Haywood Stackhouse, by name*, the said judgment being in words and figures following, to wit:

"In this case, for the reasons assigned in the written opinion of the Court, this day delivered and on file—

"It is ordered, adjudged, and decreed that there be judgment in favor of defendant; that the injunction herein be dissolved with costs, and that the said defendant, James E. Zunts, recover of plaintiffs, William & *Haywood Stackhouse*, and their surety in the injunction bond *in solido*, twenty per cent damages on the amount of the judgment herein enjoined, together with eight per cent interest as allowed in the order of seizure and sale.

"It is further ordered that the claim for attorney's fees herein be dismissed.

"Judgment rendered February 20th, 1872.

"Judgment signed March 3d, 1872.

"(Signed) CHAS. LEAUMONT,

"*Judge 5th District Court, Parish of Orleans.*"

This judgment of the District Court of the twentieth of

February, 1872, from the recording of which, on the seventeenth of April, 1872, a judicial mortgage is claimed by complainant to have been created upon the whole of Cedar Grove plantation, was afterward affirmed on appeal by the Supreme Court.

Respondents aver that on or about the fifth of March, 1875, James E. Zunts, the owner of the judgment, enforced this alleged judicial mortgage, by writ of seizure and sale against the whole of Cedar Grove plantation, as will appear by a certified transcript of the record of the District Court for the parish of Plaquemines, number 2270, made part of the answers as exhibit A B.

This proceeding was subsequent to the partition of May 17, 1872, between William Stackhouse and the widow and heirs of Haywood Stackhouse, by which the latter became the sole owners of Cedar Grove plantation, and the suit is by hypothecary action against the widow and heirs *as third possessors*, William Stackhouse not being made party thereto, though in the act of partition he assumed all charges and claims against all parties connected with the suit of Zunts vs. William & Haywood Stackhouse, then pending on appeal before the Supreme Court.

Order of seizure and sale of the whole plantation was obtained against the widow and heirs of Haywood Stackhouse, as third possessors. No notice whatever was taken of the mortgage granted by them to Ernst & Co., though it was then of record in the mortgage books of the recorder of the parish of Plaquemines, having been duly recorded there on the fourteenth of February, 1873, as appears from the proper certificate on file in this cause. Though the holders of the mortgage were no parties to the proceeding of Zunts vs. the Widow and Heirs of Haywood Stackhouse, and their rights could, therefore, be in no wise affected thereby, the sheriff took upon himself at the instance, it is presumed, of the plaintiff, Zunts, to order the erasure of the Ernst & Co. mort-

gage, without the knowledge or consent of the holders of that mortgage. It was at the sale made under the writ of seizure and sale in this hypothecary action of Zunts that Sawyer, the complainant, purchased Cedar Grove plantation.

Respondents in their answer to his bill aver that at the time of the execution of the Ernst mortgage, under which, they claim, the widow and heirs of Haywood Stackhouse, by whom that mortgage was granted, were the sole owners of Cedar Grove plantation, and that that mortgage purported to affect and did affect the whole plantation. But they admit that as against the undivided half thereof which belonged, on seventeenth of April, 1872, when the Zunts judgment of February 20, 1872, was recorded, *to William Stackhouse*, a judicial mortgage resulted from the recording of the judgment, and that this judicial mortgage was prior in date and superior in rank to the Ernst conventional mortgage. But they aver that as to the undivided half of the plantation which belonged, at the time of the rendition of the Zunts judgment, and the recording thereof, *to the widow and heirs of Haywood Stackhouse*, it was, at the time of the granting of the Ernst mortgage, and at the time of the institution of the hypothecary action by Zunts and of the sale thereunder of the property to Sawyer, *entirely unaffected and unincumbered by any judicial mortgage resulting from the recording of the Zunts judgment*, and that the Ernst mortgage was and is *the only mortgage* then and now affecting the undivided half of the plantation which was the property of the widow and heirs of Haywood Stackhouse, at the time of the recording of the Zunts judgment.

Respondents aver that the notes held by them and secured by the Ernst mortgage were given for advances and supplies furnished to the widow and heirs of Haywood Stackhouse, who were then sole owners of Cedar Grove plantation, to enable them to carry on and cultivate said plantation for the year 1873; and that such supplies and advances were furnished to the full amount stipulated for; and they deny that

Ernst & Co. were repaid for them by products of the crop of 1873, shipped to them. They further deny that Ernst & Co. appropriated the proceeds of certain machinery, as alleged in the bill, and they say if such proceeds were received it was a matter separate and distinct from the contract for supplies and the mortgage to secure the same, which is in no wise affected thereby.

Respondents in conclusion say that the pretended sale referred to in complainant's bill, and under which he claims title to Cedar Grove plantation, was and is an absolute nullity, from which no title can be derived, for the reason that it was made in open disregard and disobedience of the imperative requirements of the constitution of the State of Louisiana and of the statutes of the State in force at the time of the sale, in this, that the said plantation was not sold in lots and subdivisions of from ten to fifty acres, as required by the constitution and laws, but was sold in block, in open defiance thereof.

The case as stated in the answers was sustained in all points by the proof adduced. The material facts established are as follows:

That on the 20th of December, 1867, James E. Zunts filed his petition in the Second Judicial District Court for the parish of Plaquemines, alleging that he was the holder and owner of certain promissory notes amounting in principal to $50,000, drawn by William Stackhouse and Haywood Stackhouse to their own order, and by them indorsed, and secured by mortgage on a certain plantation in the parish of Plaquemines, known as the "Bellechasse" place, and praying for a writ of seizure and sale, which was granted. Trans. p. 114, *et seq.* That on the same day, viz.: twentieth of December, 1867, William and Haywood filed their petition in the same court against James E. Zunts, praying for an injunction to restrain the execution of the writ of seizure and sale which he had obtained, on the ground, among others, that the consideration

of the notes held by Zunts was in part slaves; and upon this petition and the usual affidavit and bond required in such cases by the Louisiana Code of Practice a preliminary injunction was granted. Trans. p. 121, *et seq.* That after some proceedings, but before trial and judgment on the merits, the two cases of Zunts vs. W. and H. Stackhouse, praying for executory process, and the injunction suit of W. and H. S ackhouse vs. James E. Zunts. were by agreement of counsel transferred to the Fifth District Court of New Orleans. Trans. p. 147. That afterward, to wit: on the twenty-eighth of November, 1868, judgment was rendered in the injunction suit dissolving the injunction at the costs of the plaintiffs, and giving judgment in favor of the defendant, James E. Zunts, against the plaintiffs, W. and H. Stackhouse, for twelve per cent damages on the amount of the judgment enjoined; and that from this judgment a suspensive appeal—the effect of which under the practice of the State courts of Louisiana is to maintain in force the preliminary injunction until the case is decided on appeal —was taken, returnable on the fourth Monday in January, 1869. Trans. p. 147.

Pending this appeal, and before the cause was heard and determined by the Supreme Court, to wit, on the 18th day of December, 1869, *Haywood Stackhouse died*, and his widow was duly confirmed and qualified as natural tutrix of her minor children, the offspring of her marriage with Haywood Stackhouse. Trans. p. 110. On the 31st of May, 1870, counsel for Zunts suggested to the Supreme Court the death of Haywood Stackhouse, and that his widow, Sarah F. Brooks, had been confirmed and qualified, as aforesaid, as tutrix of her minor children, summoning her to make herself party to the cause "in her capacity of tutrix of her minor children, and representing the succession of her late husband, within twenty-five days from the receipt of said summons." Trans. p. 13. This proceeding was under Rule XIII. of the Supreme Court of Louisiana, to be found at page 98 of the transcript. There

is nothing to be found in the record to prove that this order was ever served on Mrs. Stackhouse, except a certificate of a deputy clerk of the Supreme Court, which he had no right to give, and which this Court can not regard, as to what was the tenor of the sheriff's return on the order, the return itself having been mislaid or lost. The deputy clerk certifies that the lost return showed that service had been made on Mrs. Stackhouse "*in her own right*, and as tutrix of her minor children, and representing the succession of her deceased husband" etc., while the order itself says nothing about Mrs. Stackhouse, making herself a party *in her own right*. Trans. p. 13.

Subsequently, the Supreme Court rendered a judgment in favor of the plaintiffs, which does not appear in the transcript, as it was afterward set aside and a different judgment rendered on the 27th of May, 1871, which is to be found at page 148 of the transcript, and by which "it is ordered and adjudged, that the former decree be set aside, that the judgment of the District Court be annulled, and that this case be remanded to the court *a qua* to be tried *de novo*."

It does not appear that in the proceedings *de novo* in the District Court the fact of the death of Haywood Stackhouse was ever brought to the knowledge of that court until after judgment had been rendered. The District Judge could not be informed of the fact by the opinion and mandate of the Supreme Court, which made no allusion to the death of Haywood Stackhouse; and Zunts's counsel in the case, instead of suggesting his death, conducted the cause before the District Court as though he were still alive. At page 150 of the transcript is a notice dated Nov. 24, *1871*, addressed to Messrs W. and *H*. Stackhouse, through Messrs. Roselius and Phillips, attorneys for plaintiffs. At page 152 is a commission to take testimony, sued out by Zunts's counsel on the 29th of November, *1871*, in which the case is referred to as one "wherein W. and *H*. Stackhouse are plaintiffs, and J. E. Zunts defendant."

On the same page, 152, is a bill of exception taken by

Zunts's counsel on the 4th of January, *1872*, in which is the following recital: "Be it remembered that on the 3d day of January, 1872, this case being on trial, Mrs. William Stackhouse, the wife of William Stackhouse, one of the plaintiffs, was produced as a witness to be sworn for and in behalf of *Haywood Stackhouse, the other plaintiff in said suit.*

"Whereupon the defendant objected to Mrs. William Stackhouse as *a witness for Haywood Stackhouse*, on the grounds," etc., etc.

Afterward, to wit: on the *20th of February, 1872*, judgment in the proceeding *de novo* was rendered in the words and figures following, to be found at page 154 of the transcript:

W. and H. STACKHOUSE
vs.
JAMES E. ZUNTS. } No. 18,850.

"In this case, for the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged, and decreed, that there be judgment for defendant; that the injunction herein be dismissed with costs; and that the said defendant, James E, Zunts, do have and recover of plaintiffs, William and *Haywood Stackhouse*, and their surety on the injunction bond *in solido*, twenty per cent damages on the amount of the judgment herein enjoined, together with eight per cent interest, as allowed in the order of seizure and sale."

On the 24th of February, 1872, a rule was taken by counsel for plaintiffs on defendant to show cause why a new trial should not be granted on the grounds assigned in the rule. That the judgment had been rendered *on the 20th of February, 1872*, against Haywood Stackhouse by name, although he had been dead ever since the *18th of December, 1869*, IS NOT among the grounds assigned for a new trial, which was refused, and the judgment signed on the 5th of March, 1872.

It was only *after this*, that is to say, on the 13th of March, 1872, that the widow and heirs of Haywood Stackhouse appear

as parties to the proceedings in the District Court upon an application for a suspensive appeal, which was granted. Trans. p. 155. And here it may be remarked that the law of Louisiana in relation to the right of appeal is somewhat peculiar. By the Code of Practice, art. 571, it is provided that: "The right of appeal is given, not only to those who were parties to the cause in which judgment has been rendered against them, *but also to third persons not parties to such suit when such third persons allege that they have been aggrieved by the judgment.*"

From the certificate of the recorder of the parish of Plaquemines, to be found at page 38 of the transcript, it appears that the judgment of the Fifth District Court in the proceeding *de novo*, rendered against William and Haywood Stackhouse by name, on the twentieth of February, 1872, *more than a year after the death of Haywood Stackhouse*, was recorded in the book of judicial mortgages on the seventeenth day of April, 1872.

At page 100 of the transcript will be found the admission that William and Haywood Stackhouse owned the Cedar Grove or New Hope plantation as co-proprietors from the date of its purchase by them to the death of Haywood Stackhouse, in 1869; and that he left as heirs the minors Herbert, Mabel, Maud, and Blanche, and Mrs. L. A. Bryant, then married; and that Mrs. Sarah F. Brooks, his wife and widow in community, was properly qualified as natural tutrix, and administering as such.

At the time of the inscription, on the seventeenth of April, 1872, of the judgment against William and Haywood Stackhouse, of the twentieth of February, 1872, the Cedar Grove or New Hope plantation, the Bellechasse plantation, and other property, real and personal, were owned in common, one half by William Stackhouse and the other half by the widow and heirs of Haywood Stackhouse; and on the seventh of May, 1872, a partition of the property so held in common

was effected, whereby the Cedar Grove or New Hope plantation became the property of the widow and heirs of Haywood Stackhouse, and the Bellechasse plantation the property of William Stackhouse, all of which appears from the authentic act of partition before A. Hero, jr., notary public, to be found in the transcript at pp. 69–76. The act embodies a stipulation that William Stackhouse should assume and pay all claims of James E. Zunts involved in the litigation relative to the Bellechasse place, should they be sustained by the court. At the time the partition was effected the injunction suit was pending on appeal from the judgment rendered by the District Court in the proceedings *de novo* on the twentieth of February, 1872.

After the widow and heirs of Haywood Stackhouse had become, in the manner above stated, joint owners of the whole of the Cedar Grove place, that is to say, on the sixth of February, 1873, by authentic act before A. S. Beck, notary public, Trans. p. 66, a conventional mortgage upon it was granted by Mrs. Sarah F. Stackhouse, in her own right as widow in community, and as natural tutrix of her minor children, and acting upon the recommendation of a family meeting, Trans., p. 63, and, also, as attorney in fact of her married daughter, Mrs. L. A. Bryant, in favor of Ernst & Co., a commercial firm of the city of New Orleans, to secure the payment of $15,000 advanced or to be advanced by the said firm to enable Mrs. Stackhouse, in the interest of herself and co-proprietors, to work and cultivate the plantation.

The said sum of $15,000 was represented by three certain promissory notes, all dated the sixth of February, 1873, drawn to the order of and subscribed and indorsed by Mrs. Sarah F. Stackhouse,, payable twelve months after date, one for $5438, one for $5000—now held by Leng & Ogden—and one for $4562—now held by Richard R. Montgomery—the two notes last mentioned bearing interest at eight per cent per annum from date until paid. In the act, Trans., p. 67, is an express stipu-

lation that the mortgage was "to inure to the benefit of any and all legal holders" of the mortgage notes. This act of mortgage, as appears from the certificate of the parish recorder for the parish of Plaquemines, Trans., p. 107, was duly inscribed in his office on the fourteenth of September, 1873

The final judgment of the Supreme Court of Louisiana affirming the judgment of the District Court of the twentieth of February, 1872, rendered in the proceeding *de novo* in the suit of W. and H. Stackhouse vs. James E. Zunts, was rendered on the fifteenth of December, 1873, Trans., p. 170, and inscribed in the recorder's office of the parish of Plaquemines, December 18, 1873. Trans., p. 37.

FACTS OF THE CASE.

On the 20th January, 1875, James E. Zunts filed his petition in the Second Judicial District Court, in the proceeding entitled James E. Zunts vs. Sarah F. Brooks, widow of H. Stackhouse, in her own right and as tutrix, et al., No. 2270 of the docket of that Court, Trans., p. 8. The petition alleged that in the case of W. and H. Stackhouse vs. James E. Zunts, No. 906 of the docket of that Court, and No. 18,850 of the docket of the Fifth District Court for the parish of Orleans, judgment was rendered in favor of petitioner that the injunction therein issued "be dismissed with costs, and the said James E. Zunts do have and recover of the plaintiffs, William and Haywood Stackhouse, and the surety on the injunction bond *in solido*, twenty per cent damages on the amount of the judgment therein enjoined, together with eight per cent interest, as allowed in the order of seizure and sale." That the judgment was for $50 000, and $4166 66 interest to the 15th of February, 1867, making the total damages allowed $10,833 66. That petitioner caused the said judgment to be recorded in the office of the parish recorder on the 17th of April, 1872, the said judgment in the case of W. and H. Stackhouse vs. James E. Zunts, No. 18,850 of the docket of the Fifth District

Court for the parish of Orleans, and that the petitioner further *notified them, as third possessors* of the New Hope plantation, to pay the amount of the judgment or to deliver the property upon which petitioner had a judicial mortgage, resulting from the inscription of said judgment, otherwise the petitioner would proceed against them and against said property in the manner pointed out by law. That notwithstanding this demand, and the expiration of more than sixty days since the same was made by petitioner, the said defendants neglect to comply with it, and refuse to pay said hypothecary debt or to deliver up said property.

Wherefore petitioner prayed for and obtained a writ of seizure and sale.

Under this writ the New Hope plantation was on the 6th of March, 1875, adjudicated by the sheriff to Silas W. Sawyer for the price of $6670 cash, but under instructions from the plaintiff, Zunts, he was allowed to retain in his hands the sum of $3186 80, balance remaining after payment of costs and taxes due on the property. From the deed, which is to be found at pp. 110-114, it appears that the certificate of mortgages read at the sheriff's sale set forth among the mortgages affecting the property the following:

"Fifth. The mortgage granted by Mrs. Sarah F. Stackhouse in favor of Ernst & Co., as per act passed before A. S. Beck, notary public, on the 6th of February, 1873, to secure the payment of $15,000, in three notes, dated February 6th, 1873, payable twelve months after date. * * Recorded, February 14th, 1873. * * *

"Fifteenth. The one resulting from a judgment rendered by the Honorable the Fifth District Court for the parish of Orleans, on the 20th of February, 1872, in the case of W. and H. Stackhouse vs. James E. Zunts, No. 18,850 of the docket of said Court, allowing James E. Zunts twenty per cent damages on the amount of the judgment enjoined, together with eight per cent interest. Recorded, April 17th, [redacted] /872.

"Sixteenth. The one resulting from a judgment rendered by the Supreme Court of Louisiana, on the 1st day of December, 1873, in the case of W. and H. Stackhouse vs. James E. Zunts, No. 4019, for the sum of fifty thousand dollars, with twenty per cent damages. Recorded, December 17th, 1873."

Although the mortgage in favor of Ernst & Co. is set forth in the recorder's certificate, incorporated in the sheriff's deed to Sawyer of the 6th of March, 1875, as has been seen, yet the Court will find at page 107 of the transcript, appended to the certificate of inscription of the Ernst & Co mortgage on the 14th of February, 1873, the following:

"By virtue of a certificate of release, dated March 6th, 1875, issued by Oscar B. Sarpy, sheriff of this parish, annexed to page 460 of this book, this mortgage is entirely raised, canceled, and annulled.

"Parish of Plaquemines, this 8th day of March, A.D. 1875.

"(Signed) C. V. THEBAUT, Recorder."

And on page 108 of the transcript is the following:

"To C. V. THEBAUT, Esq., Recorder in and for the Parish of Plaquemines—*Dear Sir:* You are hereby directed to erase and cancel the mortgages existing and inscribed against New Hope plantation in the name of Sarah F. Stackhouse, in her own right and as tutrix, subsequent to April 17th, 1872, in compliance with an adjudication made by me on this 6th March, 1875, in the case of James E. Zunts vs. Sarah F. Stackhouse, No. 2270 of the docket of the Second Judicial District Court for the parish of Plaquemines, so far as they affect the New Hope plantation.

"(Signed) O. B. SARPY, *Sheriff.*"

Disregarding altogether this sale to Sawyer under the judgment and judicial mortgage alleged to exist against the widow and heirs of Haywood Stackhouse by reason of the rendition and inscription as above set forth of the judgment of the Fifth District Court for the parish of Orleans, in the suit No. 18,850 of the docket of this Court, in favor of Zunts against

William and Haywood Stackhouse, Richard R. Montgomery, and Leng & Ogden, who had become the holders of two of the notes secured by the conventional mortgage to Ernst & Co., filed their bill in the United States Circuit Court for the District of Louisiana against Mrs. S. F. Stackhouse, in her own right, and as tutrix of her minor children, and Mrs. L. A. Bryant and her husband, for executory process against the Cedar Grove or New Hope plantation, which was granted; and thereupon Silas W. Sawyer filed his bill for an injunction to prevent the sale of the plantation under the writ of seizure and sale sued out by Richard R. Montgomery and Leng & Ogden, and the injunction was granted by the Circuit Court by the decree from which this appeal is taken.

On the tenth of June, 1878, an interlocutory decree was rendered referring the matter to a master to take evidence and report as to the amount of money actually advanced by Ernst & Co. on the mortgage notes of 1873. Trans., p. 175, 176.

In an oral opinion delivered by the District Judge who tried the case, at the time of the entering of the order of reference, he stated that he considered that no mortgage resulted in favor of Zunts upon the New Hope plantation by the inscription of the judgment of the twentieth of February, 1872, in the case of W. and H. Stackhouse vs. James E. Zunts, No. 18,850 of the docket of the Fifth District Court; and that the mortgage in favor of [redacted] & Co. was a valid and binding mortgage on the New Hope plantation at the time of the alleged sale to Sawyer under the pretended judicial mortgage aforesaid; and Montgomery and Leng & Ogden had the right to enforce the collection of the notes held by them by executory process against the mortgaged property to the extent of the advances shown by the evidence to have actually been made by Ernst & Co. on account of the mortgage notes.

As this opinion was merely announced orally from the bench it does not appear in the transcript, except inferentially from the fact that the court could have had no occasion to

order such a reference except upon the ground that Montgomery and Leng & Ogden were entitled to the remedy sought by them to the extent of the money shown to have been actually advanced on the mortgage notes. If the court had then been of the opinion at which it ultimately arrived, that they were not entitled to recover at all, there would have been no occasion for reference to a master. Trans., pp. 175, 176.

On the 20th of June, 1878, the master reported as actually due on the notes the sum of $9585 44, to which report exceptions were filed on the 8th July, 1878. Pending the reference to the master, and before his report was made, to wit, on the 13th of June, 1878, a petition for a rehearing was filed on behalf of Sawyer, though no decree had been entered except as to the reference for the purpose stated. On the 19th of June, 1878, this application was refused. Trans. p. 176.

Afterward, to wit, on the 4th of January, 1879, by leave of court, *another* application for a rehearing was permitted to be filed, although there still had been no decree rendered in the cause except that of reference to the master. In this application, in addition to the grounds previously occupied in support of the validity of the judicial mortgage alleged to have been created in Zunts's favor by the inscription of the judgment of the 20th of February, 1872, against William and Haywood Stackhouse, the extraordinary position was assumed that though, *in all other* cases *except this* the law of Louisiana was undoubtedly that a judgment against a dead man was an absolute nullity from the inscription of which no mortgage can arise, yet as to *this* case the law *was otherwise*; and the court was asked to come to this conclusion, from the fact that the Supreme Court of Louisiana, when the judgment of the Fifth District Court of the 20th of February, 1872, was before them on appeal, and after they had decided it on the merits, as though all proper parties were before the Court, had had its attention called in a brief in support of an application for a

rehearing, filed by counsel not concerned in the argument of the case on the merits, to the fact that as to one of the parties to the judgment appealed from the judgment was one against a dead man; and that notwithstanding this the Court declined to grant the rehearing.

For the first time, also, the ground was assumed in this petition for a rehearing that "so far as the heirs of H. Stackhouse are concerned * * the property mortgaged by them to the defendants *was never theirs* to mortgage, but was the property *of their father*, H. Stackhouse, against whom Zunts had his judgment; and the petition goes on to argue that even if Zunts had no judicial mortgage, and was regarded only as an ordinary creditor of the succession of H. Stackhouse, still the debt was secured by some mysterious sort of tacit mortgage or lien that would override and displace, at least so far as the interest of the minors were concerned, all subsequent alienations and incumbrances of the property.

Upon this petition the case was re-opened upon all points, and argument heard, and the judge coming to the conclusion that Leng & Ogden and Montgomery were not entitled to the remedy sought by them in their executory suit, and that Sawyer was entitled to the injunction prayed for by him, the exceptions to the master's report were not passed upon at all, but the decree of the 16th of April, 1879, from which this appeal was taken, was rendered granting the injunction as prayed for. Trans. pp. 180–184.

The reasons for this decree do not appear in the transcript, as they were only given orally, but the District Judge was understood to predicate the decree upon the last ground urged in the petition for rehearing, viz: that an ordinary creditor of a succession has a tacit lien or mortgage on the property of the succession which will displace or override any subsequent alienation and incumbrance of it, and that as to such ordinary creditor any subsequent mortgage of the property is void.

ARGUMENT.

Upon the case as stated it is respectfully submitted:

I

That respondents, as mortgagees under the Ernst mortgage, importing confession of judgment and containing the pact *de non alienando*, have the right to proceed *via executiva* to have the property subject to their mortgage seized and sold to satisfy it in a direct proceeding against the mortgagors, and without regard to any subsequent change of possession or ownership; and that this right can not be affected or derogated from by any proceedings had *inter alios*, judicial or ministerial, to which they were not parties.

That at the time of the institution of hypothecary proceedings by Zunts, and of the sale there under to Sawyer, an undivided half of Cedar Grove plantation was subject to a judicial mortgage in favor of Zunts, resulting from the recording on the seventeenth of April, 1872, of the judgment of February 20, 1872, but that the other undivided half was not affected by or subject to any judicial mortgage in favor of Zunts, resulting from the recording of said judgment, but was then and is now subject to the conventional mortgage granted by the widow and heirs of Haywood Stackhouse in favor of Ernst & Co.

II.

That the judgment in favor of Zunts, rendered on the twentieth of February, 1872, in so far as it purported to be a judgment against Haywood Stackhouse, who died in December, 1869, was *an absolute nullity;* and that if the judgment had been a valid judgment rendered against Haywood Stackhouse during his life, no judicial mortgage against the property of his succession could have resulted from the recording of the judgment *after his death.*

III.

No judgment was rendered or recorded against the widow

and heirs of Haywood Stackhouse, by name or otherwise. The judgment as rendered and recorded is against Haywood Stackhouse, *by name*, he being dead at the time. It would not aid the case of the complainant to show that the widow and heirs were made parties to the suit on appeal, and were parties when the judgment was rendered, if the judgment actually rendered, instead of being against the parties alive and in court, was in terms against one who had been a party, but was then dead and in his grave.

The judicial mortgage exists and has vitality solely by inscription. It has no operation or existence except as against the parties named in the judgment as recorded; and third persons are not required to look into the proceedings in the suit, or elsewhere than into the record of the judgment itself in the recorder's office, to ascertain whether the judgment is operative against other parties than those named in the judgment.

IV.

Sawyer, having purchased under a judgment *absolutely null* in so far as the undivided half of Cedar Grove plantation, belonging to the widow and heirs of Haywood Stackhouse at the time of the rendition and recording of said judgment is sought to be affected thereby, acquired no title whatever by his said purchase to said undivided half of the plantation, and, therefore, has no ground upon which to stand in court to contest or question the validity of the mortgage upon the undivided half asserted by respondents in their executory suit against the mortgagors.

V.

If, however, complainant can be considered to have a standing in court to contest that mortgage, he *certainly can not be permitted to do so* upon grounds purely personal to the minors and to the married woman, Mrs. Bryant, for whose benefit as well as that of Mrs. Stackhouse the advances and supplies were furnished for which the mortgage was given.

Mortgage is a *quasi alienation*, a species of alienation; but the formalities which the law has established for the alienation of the property of minors or married women are ordained *exclusively for their benefit*, and the nullities resulting from the omission of some or all of such formalities are purely relative, and the minors when they come of age, or the married women alone, can avail themselves of such nullities.

Transactions involving such relative nullities are, until set aside at the instance of minors or married women, valid as to all other persons, and even when the minors or married women themselves seek to set aside contracts which have inured to their benefit, they are only permitted to do so upon condition of accounting for or returning what has inured to their advantage and placing matters in *statu quo*. In the present case the evidence clearly shows that the advances and supplies furnished by Ernst & Co. inured to the benefit of the minors and the married woman, who were part owners of the plantation for the cultivation and carrying on of which they were furnished.

VI.

The complainant's alleged right to resist the enforcement of their mortgage by respondents rests solely upon his averment of title in himself to Cedar Grove plantation. As already stated, his title, as to one undivided half of the plantation, being predicated upon a judgment absolutely null, is itself equally null and void.

VII.

An ordinary creditor of a succession has no tacit lien or mortgage upon the property of the succession that will override or displace subsequent incumbrances or alienations of the property by the heirs. It is a contradiction in terms to say that any *ordinary* creditor has a *mortgage* or *lien* of any kind. The remedy of the ordinary creditor while the succession is under administration is to prove his debt in the probate court and

seek payment there. After the heirs are put in possession, he must sue them before the courts of ordinary jurisdiction.

VIII.

The pretended sale referred to in complainant's bill, under which he claims title to Cedar Grove plantation, was, and is, an absolute nullity, from which no title can be derived, for the reason that it was made in open disregard and disobedience to the constitution of the State of Louisiana and the statutes of the State in force at the time of the sale, in this: that the plantation was not sold in lots and subdivisions of from ten to fifty acres, as required by the constitution and the laws, but was sold in block in open defiance thereof.

I.

At the outset of the argument it is important to advert to the wide difference which exists in their essential features between the contract known to the English common law and equity jurisprudence as a mortgage, and the contract denominated a conventional mortgage by authentic act, with the pact *de non alienando* in Louisiana law and jurisprudence. The common-law mortgage differs radically in form, substance, and effect from the Louisiana conventional mortgage. The English mortgage is well known to the jurisprudence of Louisiana and France under another name, the *vente à reméré*, which, when used, as it may be and frequently is used, as a security for debt, is so analogous to the common-law mortgage in form, substance, and effect as to be almost identical.

Mr. Butler, in his note No. 96 to Coke upon Littleton, 205 A., sec. 332, says: "As to the origin of mortgages, from what is said of them in this chapter it appears that they were introduced less upon the model of the Roman *pignus* or *hypotheca*, than upon the common-law doctrine of conditions. This circumstance has had a very important influence on the English law respecting conveyance by mortgage."

Mr. Powell, a writer of high authority, attributes the origin of the English mortgage to the Roman law, but finds it not in the provisions of that system relative to the *hypotheca* or *hypothèque* of the civilians, but in the very law No. 2 *de pactis inter emptorem et venditorem compositis* to which the civilians trace the *vente à reméré*, or sale with the right of redemption. On the first page of his work on mortgages, Mr. Powell says: "Mortgaging, as practiced with us, seems to owe its introduction more immediately to the Roman law, which distinguished between things pledged or *hypothecated* and things *mortgaged*.

In the following passage we have a *description of our English mortgage* of lands in the *Roman law*:

"*Si fundus parentis tui ea lege vendiderunt, ut sivi ipsi, sivi hæredis eorum, emptori quandocunque, vel intra certa tempora, obtulissent, restituerentur, teque parato satisfacere conditioni, emptori non paret; ut contractus fides servetur, actio præscriptis verbis, vel ex vendito, tibi dabitur; habita ratione eorum quæ post oblatum ex pacto quantitatem ex fundo adversarium per venerant.*" Cod. L. IV, I. 54 l. 2.

To this identical law do the French civilians refer the origin of their *vente à reméré*. Pothier, Contrat de Vente, tom 3, No 380.

Not only are the English mortgage and the *vente à reméré* of the French and Louisiana law of identical origin, but the parallel between them is perfect in the characteristics of equity of redemption and correlative right of foreclosure, and both were fully recognized and established in the jurisprudence of England and France by their highest courts at about the same epoch, that is to say, about the middle of the seventeenth century.

The time at which the jurisdiction of chancery in respect of the equity of redemption and right of foreclosure became fully recognized and established in England was during the reign of Charles I., or from 1625 to 1648.

Reeves' Hist. of English Law, vol. 3, p. 338.

Spence Equity Jurisdiction of High Court of Chancery, vol. 1, p. 596.

Jeremy on the Equity Jurisdiction of the High Court of Chancery pp. 176–177.

Pothier, Contract of Sale, No. 395, says: "From the right of redemption" (in the *vente à reméré*) "arises the action of redemption. This action is a branch of the action *ex vendito*." No. 436. "The right of redemption is extinguished by operation of law, by the expiration of the time of legal prescription, when it has not been interrupted; whereas jurisprudence has established that the right of redemption is not extinguished by the expiration of the conventional prescription"—or term limited for performance of the contract—"but that it is necessary in order to extinguish it, that after the expiration of the term, the purchaser subject to the right of redemption should obtain against the vendor or his successors, to whom the right belongs, a judgment foreclosing the right *(qui les en déclarat déchus.")*

Here we have in the law as relating to the *vente à reméré* the equitable right of redemption after the expiration of the term of payment, with an appropriate action to enforce it, continuing until the term of legal prescription, or thirty years, with a correlative right on the part of the vendee to have the equitable right of redemption foreclosed by a decree to that effect obtained upon suit instituted to that end in the proper court.

We have seen that the equity of redemption and correlative right of foreclosure were first fully recognized and enforced in England in the reign of Charles I., or between 1625 and 1648. In the year 1650, as may be seen by reference to authorities quoted by Denevers, Journal de la Cour de Cassation, 1 Fremaire, An. III. (November 23, 1803), Goblet vs. Gibert, a celebrated decree was rendered by the Parliament of Paris, the highest court of the kingdom, when the question having been submitted to all the chambers it was adjudged

distinctly *(nettement)* that in the matter of contracts with the right of redemption *(sous faculté de reméré)* the property can not be acquired by the purchaser absolutely, nor the contracts purged nor purified (of the right of redemption) until thirty years from the expiration of the term, unless there has been a decree rendered against the vendor or his successors contradictorily or by default.

The *vente à reméré* of the Louisiana Code, C. C. 2545 *et seq.*, when used as a security for money loaned as it may be, and often is, is the equivalent of the common-law mortgage; but the contract *called* a conventional mortgage in the law and jurisprudence of Louisiana has not a feature of the common-law mortgage about it, except that it is a security for the payment of money affecting the reality. As the contract of mortgage relied upon by the appellants in this case is a Louisiana conventional mortgage, by authentic act, with the pact *de non alienando*, it becomes necessary here to examine the laws defining the character of such a contract, and determining the rights of the parties thereto. The common-law mortgage is "the conveyance of an estate by way of pledge for the security of debt, and to become void on the payment of it." 4 Kent Com. p. 138. "A contract of sale executed with power to redeem." Powell p. 23. A Louisiana conventional mortgage is "a right granted to the creditor over the property of his debtor, and gives him power to have it seized and sold in default of payment." C. C. 3278.

Far from being the conveyance of an estate to the creditor, a conveyance is so inconsistent with its very nature that any conveyance to the creditor immediately *extinguishes the mortgage.* C. C. 3374.

The mortgage relied upon by the appellants is by *authentic act before a notary public.* The authentic act as relates to contracts is that which has been executed before a notary and two witnesses, having the legal qualifications, C. C. 2231; and is full proof of the agreement contained in it against the

contracting parties, and their heirs and assigns, unless it be declared and proved a forgery. C. C. 2233.

In matters of mortgage, where the debtor has declared or acknowledged the debt for which he gives the mortgage, the authentic act "*imports confession of judgment*," and in default of payment by the debtor at the day, entitles the creditor to *instant execution*, by writ of seizure and sale against the property on simple petition, and without citation. C. P. 732–4.

The authentic act of the French civil law and of the Louisiana Codes is an instrument *not known* to common-law jurisprudence. The common-law deed, though analogous to it in some respects, is by no means its equivalent. The latter instrument is an instrument under seal, but the seals are the *private* seals of the parties; the authentic act upon which instant execution issues is an instrument *under seal of public office*. A warrant of attorney by deed to confess judgment is the nearest approach to the authentic act in the common-law system, and the resemblance is noted by Bouvier, in his Law Dictionary *verbis: Exécution Parée*, "In French law a right founded on an act passed before a notary, by which the creditor may *immediately, without citation or summons, seize and cause to be sold* the property of his debtor, out of the proceeds of which to receive his payment. It imports a confession of judgment, and is not unlike our warrant of attorney."

The functions of a notary public in Louisiana and in France are in many respects *quasi judicial*. The notary known to the English law differs as widely from the Louisiana or French notary as the English mortgage differs from the Louisiana mortgage, or French *hypothèque*, by authentic act. Brooke on Notary informs us that in England a notary is a public officer of the civil or canon law, and derives his faculty or authority to practice from the Courts of Faculties of the Archbishop of Canterbury, and that, among his other faculties, he is authorized to draw or prepare deeds relating to real or personal property, "if in other respects he is competent by legal knowledge

and experience." But the deeds when drawn are entitled to no greater effect than when drawn by any other practicing conveyancer. The Louisiana or French notary, on the other hand, is a public officer, *exercising quasi judicial functions.*

Loret, a French writer of standard authority, in his *Eléments de la Science Notairiale*, p. 1, speaks of notaries as "magistrates and ministers of the voluntary jurisdiction," and says that "they exercise in this jurisdiction functions absolutely similar to those attributed to the judges of the contentious jurisdiction." In France their offices were originally in the immediate vicinity of the courts of justice, in the same building (in Paris at the *Chatelet*), and they were, and are, as much officers of the courts as the masters are of Courts of Chancery. Execution was, for a long time, issued directly from the notarial office by the notary, in the name of the chief of the State, and enjoined upon all competent legal authorities, civil and military, to enforce and maintain the execution. Loret, *Eléments de la Science Notariale*, p. 377.

The Supreme Court of Louisiana, in the Succession of Tête, 7 A. 96, referring to notaries, says: "Courts of justice by means of these officers are relieved from a large mass of business which would otherwise impede and embarrass their ordinary proceedings. * * * * * *The records of a notary are closely assimilated to judicial records. The whole system of executory process is based upon this resemblance. It is resorted to when the creditor's right arises from an act importing a confession of judgment, and contains a privilege or mortgage, which is an act passed before a notary public and witnesses, in which the debt is acknowledged for which the privilege or mortgage is given.*"

The mortgage relied upon by the appellants contains the stipulation known as the *pact de non alienando*, which is as follows: "And the said Mrs. Sarah F. Stackhouse, for herself and all the parties she herein represents, promises and binds them and herself not to sell, alienate, or deteriorate the property herein mortgaged." Trans. p. 68.

A purchaser of property subject to a mortgage containing the pact *de non alienando* can not claim to be in any better condition than his vendor. Any alienation or violation of the pact is null as to the creditor, who may proceed *via executiva*, as if the property still belonged to the mortgagor. 1 L. 39; 13 L. 315; 14 L. 133; 15 L. 267, 471; 19 L. 491; 2 R. 378; 4 R. 389; 6 R. 58; 9 R. 283; 10 R. 54; 2 A. 453; 3 A. 268; 4 A. 324; 8 A. 58.

And it makes no difference as to the creditor's right whether the alienation is voluntarily made by the debtor or is made by forced sale. A reference to the following, among many decisions of the Supreme Court of Louisiana, will be sufficient to establish this beyond controversy:

In Murphy vs. Jandoz, 2 Rob. 379, Jandoz, holding a mortgage with the pact *de non alienando*, granted by Clark, sued out a writ of seizure and sale against the property then owned and held by Murphy, who derived title by purchase at sheriff's sale under execution against Clark. Thereupon, Murphy enjoined and set up his title by sheriff's deed, but the court said:

"The mortgage to Jandoz contains the pact *de non alienando*, consequently, *no transfer of the property* would affect his right to proceed summarily against it as if still belonging to the mortgageor."

So in Barrow vs. Bank of Louisiana, 2 A. 454, Overbay mortgaged lands to the bank with the pact *de non alienando*. Overbay then sold to Purl, who afterward sold to Varney, and at a marshal's sale, under execution against Varney, Barrow bought, who was in possession when the bank proceeded *via executiva* against the property, disregarding all alienations made subsequent to the mortgage. Barrow enjoined, but the court held that the bank had the right to proceed *via executiva* without regard to the title by marshal's deed.

So, in an early and leading case, Donaldson vs. Maurin, 1 L. 29, William Donaldson in 1812 sold to Maurin two lots

of ground, retaining mortgage for the price with the *pact de non alienando*. In 1814 Maurin entered into partnership with Hopkins in relation to the lots, by which they became joint owners. Hopkins died soon after, and *at a probate sale* his widow became purchaser of the lots. The widow afterward intermarried with Pedesclaux, who sold the lots to Bringier, who became insolvent; and the property was finally sold as belonging to the estate of Bringier, one lot *by sheriff's sale* and the other *by the collector of taxes*, when Mrs. Lefort became the purchaser of one of the lots and François Lefort of the other.

About the year 1830 the testamentary heir of Donaldson brought suit directly against Maurin, the original mortgagor, to enforce the mortgage against the two lots. Maurin had Pedesclaux and wife made parties, who cited the syndic of Bringier who cited Madame Lefort, who was in possession of one of the lots. François Lefort, who owned and possessed the other lot, *was not made party to the proceedings at all.*

The District Court ordered both lots to be seized and sold to satisfy the mortgage, and on appeal the Supreme Court said: "The judgment of the District Court having condemned all the property mentioned in the mortgage to be sold, *id est*, both lots, and it appearing that one of them is held by a *person who has in no manner been made a party to this suit*, it becomes our duty to inquire into the effect of the *pact de non alienando*." And the court held that by virtue of that pact all the subsequent alienations, voluntary, by probate sale, by sheriff's sale, and by tax-collector's sale, were to be disregarded, and affirmed the judgment of the District Court, ordering both lots to be seized and sold to satisfy the mortgage.

Again, in a very recent case, Horton vs. Cutler, 28 A. 331, which was a proceeding *via executiva* to enforce a mortgage with the *pact de non alienando*, and where the mortgage proceeded upon *had been previously erased* in obedience to a decree of the Second District Court, and the property had been sold clear of encumbrance *at probate sale*, and had afterward been

sold at private sale, under a certificate from the mortgage office annexed to the act of sale, showing that there were no mortgages against the property, the purchaser in possession sought to enjoin the proceedings against the property *via executiva*.. But the Supreme Court said: "The intervenor contends that the property having been acquired by him he should have been proceeded against. But the mortgage contains the *pact de non alienando*, which enables the holder of the mortgage to proceed against the property into whose hands soever it may have passed. * * * The plaintiff's rights were not compromitted by these proceedings (to erase the mortgage), which were as to her *res inter alios acta*. That the intervenor must be protected as an innocent third purchaser, shielded by the mortgage certificate at the time he purchased, can scarcely be conceded, where, as in this case, the effect of the protection would be to destroy the rights of a party on the property acquired and held in good faith, and who was entirely innocent of all participation in the acts which exposed the intervenor to loss and injury. A mortgage certificate, it has been frequently held, is only *prima facie* evidence of the facts stated in it. 20 A. 424, and authorities there cited. 'The mortgage,' it is there said, 'may show that the mortgage certificate is untrue; that the recorder acted on insufficient evidence; or in case of erasure by judgment, that he was not a party to the action brought or proceedings instituted to cancel his mortgage. In such cases, we think the mortgage exists unimpaired, even against the innocent vendee, who has bought on the faith of a certificate that there was no mortgage on the property.' In this opinion as to the effect of an illegal or unauthorized erasure we fully concur."

II.

The judgment under which the complainant, Sawyer, claims title, was and is, in so far as it purports to be a judgment against Haywood Stackhouse, *an absolute nullity*. Haywood Stackhouse died in December, 1869, and the judgment relied

on was rendered against *him*, by name, in February, 1872. A judgment against one who is dead at the time of its rendition is an absolute nullity. Complainant's counsel in their brief in the Circuit Court cite Bailey vs. Smith, 12 L. 510; Smith vs. Nicholson, 6 A. 704; and Howard vs. Copley, 10 A. 505; as cases where judgments held to be valid were rendered by name against parties who were dead at the time of the rendition of the judgments. Bailey vs. Smith does not show any thing of the sort. It is stated in the opinion of the Court in that case that the plaintiff having died, and the administration of his succession being committed to his widow, she was made party to the suit, and there was a verdict and judgment for the defendant. In Smith vs. Nicholson, the defendant having died after the institution of the suit, the plaintiff in a supplemental petition suggested his death, and prayed that the administrator of his succession might be cited and judgment rendered against *him* for the plaintiff's demand. The administrator appeared and excepted to the suit, upon the ground, among others, that he as administrator could not stand in judgment in a suit sounding in damage for a misdemeanor alleged to have been committed by his deceased intestate. The District Court sustained the exception, and rendered final judgment in favor of *the administrator*, from which the plaintiff appealed, and the Supreme Court, being of opinion that the exception should have been overruled, reversed the judgment and remanded the cause for further proceedings according to law. Howard vs. Copley, the third case cited, is, if it be possible, more irrevelant to the point which it is invoked to sustain than Bailey vs. Smith and Smith vs. Nicholson. It is simply impossible that those decisions, or any others to be found in the books, could countenance the assumption that a valid judgment may be rendered by name against a dead man. It is contrary to the most rudimentary ideas of the proper method of administration of distributive justice that a valid judgment can be rendered by name against a party not competent to stand in

judgment, and it is intrinsically absurd to say that a valid judgment may be rendered by name against one not in being in this world at the time of the rendition of the judgment.

Morse vs. Tappan, 3d Gray, Mass. 510, was an action of contract on a judgment recovered against a married woman, living separate from her husband, and carrying on business on her own account and in her own name, as keeper of a boarding-house.

SHAW, C. J., said: " * * * The fact that the defendant was a married woman when the judgment was rendered against her would alone be a good bar to this action. * * A judgment is in the nature of a contract; it is a specialty, and creates a debt; and to have that effect it must be taken against one capable of contracting a debt."

Randall and his wife, an administrator, etc., 2 Modern Rep. 308, was an action of "debt upon a bond against the defendant as administrator; they pleaded *a judgment delivered* against the intestate in Hilary Term, 26 and 27 Car. 2, and that they had not assets *ultra*. The plaintiff replies that there was an action against the intestate, but that *he died before judgment*, and that after his death judgment was obtained and kept in force *per fraudem*. The defendant traversed the fraud, but did not answer the death of the intestate; and the plaintiff demurred. * * *

"The Court were of opinion that the plaintiff might avoid the judgment without a writ of error; especially in this case, where it is not only erroneous, *but void*."

The law and jurisprudence of Louisiana, by which the rights of the parties to this litigation are to be determined, are too clear in this particular to admit of rational controversy as to their conclusiveness against the pretensions of the complainant.

In Edwards vs. Whited, 29 A. 650, the Supreme Court of Louisiana say:

"If a judgment is an absolute nullity, it can not be en-

forced; and the nullity can be invoked by any one against whom the attempt to enforce it is made; and no valid judgment can be rendered for or against a dead man. * * * We do not hesitate to say that a decree of this Court for or against a person no longer in existence is an absolute nullity, and that the nullity may be shown by any person against whom an attempt is made to enforce it.

Again, in McCloskey, Bigley & Co. vs. Bridges & Wingfield, reported in the same volume, 29 A. 142, the Court said: "The proof is that James H. Wingfield died on the 2d of April, 1874, more than a year before the judgment, which was rendered on the 21st of May, 1875. The judgment, therefore, against the firm of Wingfield & Bridges, and against James H. Wingfield, was *a mere nullity, absolutely void.*"

Again, in Nicholson vs. Succession of Jennings, 31 La. An. p. 329, it is said: "A judgment can not be rendered in favor of a deceased person or against him."

The fact that the widow and heirs of Haywood Stackhouse were made parties on appeal to the suit in which the judgment relied on by complainant was rendered does not aid the complainant's case, from the fact that the judgment as rendered is not against the widow and heirs by name, or otherwise, but against the original party, Haywood Stackhouse by name, who was dead. Norton vs. Jamison, 23 A. 102, is a case exactly analogous in this particular. A judgment had been rendered in the District Court of the United States for the District of Louisiana against H. R. W. Hill and other parties named in the judgment, after the death of Hill. From this judgment an appeal was taken to the Circuit Court, and James D. Hill, who was the sole heir and legatee of H. R. W. Hill, and had accepted his succession purely and simply, *joined in the appeal and became a party principal in the appeal bond.* In the U. S. Circuit Court James D. Hill *made himself a party to the cause.* The original judgment was affirmed in the Circuit Court, and from this judgment an appeal was taken to the

Supreme Court of the United States, *in which appeal James D. Hill joined.* The judgment was affirmed by the Supreme Court of the United States. After the judgment of the District Court, which was afterward affirmed by the Circuit and Supreme Courts, had been inscribed in the mortgage office, and after James D. Hill had made himself a party to the suit in the Circuit Court, he sold certain property which he had inherited from H. R. W. Hill to Jamison, *who had full knowledge* of the recordation of the judgment against H. R. W. Hill, and of its inscription in the mortgage office. In an hypothecary action Norton, the judgment creditor, obtained an order of seizure and sale of the property bought and held by Jamison, and Jamison enjoined, and the Supreme Court, perpetuating the injunction, held that the judgment rendered against H. R. W. Hill, after his death, was a nullity, and no judicial mortgage could result from the inscription of it.

The counsel for Sawyer, upon whose application a rehearing was granted, although a similar application made by Sawyer's original counsel had been refused, in their petition for rehearing, Trans. p. 181, refer to this case of Norton vs. Jamison in the following extraordinary manner: "The authority of Norton vs. Jamison, and the doctrine there enunciated, *must remain as good law and binding upon the courts* in ALL CASES BUT THIS, (!) which, as we have shown, has been specially adjudicated otherwise." The process of argumentation by which it is sought to establish that the Supreme Court of Louisiana *stultified* itself by "specially adjudicating" that law which was good law, and binding on the courts in all other cases, *was not law and not binding on the courts in one particular case*, is rather peculiar.

The first decision of the Supreme Court on the appeal from the second judgment of the Fifth District Court in W. and H. Stackhouse vs. James E. Zunts was rendered on the thirty-first of May, 1873, two of the judges dissenting, and affirmed the judgment appealed from.

Thereafter a petition for a rehearing was filed by E. Howard McCaleb, of counsel for appellants, which starts out with the statement that "*in addition to the reasons assigned by their other counsel,*" they beg leave to submit, through Mr. McCaleb, "the following grounds and argument for a rehearing, and to urge the same" upon the attention of the Court. The petition then goes on to set forth a variety of grounds in support of the application. At page 162, under the fourth head, it is said: "Your petitioners also respectfully call your Honors' attention to the fact that the judgment appealed from was rendered *against them*, without their having become or having been made parties in the Court below." * * *

But further on, at p. 167 § 4, it is said: "But perhaps we owe your Honors an apology by first presenting our case as if judgment had been rendered against us *eo nomine*, without previous citation or notice of revival. *The positive state of the case is that there was no such judgment, but only a judgment against a dead man.* The judgment we appealed from, and of which we demand the nullity, is one *rendered not against us*, but against the deceased, Haywood Stackhouse, *eo nomine*, after his death. * * *

"The judgment *is not against us*, your petitioners, *and we might have turned our backs upon it, and waited to see how it could be carried into execution* on the property we have inherited. Even a sale of the property under it would have been null. (See 24 An. 253; see, also, 24 An. 472). * * * There is nothing said or done in the record to bind us. No judgment against us."

On the 15th of December, 1879, the opinion of the Supreme Court on the rehearing was delivered by Associate Justice Morgan, Trans. 170, and a dissenting opinion by Ludeling, C. J., concurred in by Howell, J. Trans. p. 174.

In neither of the opinions is the remotest allusion made to ANY *of the grounds set forth in Mr. McCaleb's petition for a rehearing.* The Court simply ignored it altogether; and for the

simple reason, that it nowhere appears in all this record that the matters set up in this petition had *ever before* been presented to the Court for consideration. Where such matters are set up *for the first time* in a petition for rehearing, the Court will not notice them.

In the succession of Brown, 14 A., the Supreme Court of Louisiana said: "It is the *settled practice* of this Court *not to notice* in applications for rehearing points which were not made in the argument of the cause." It appears on the face of Mr. McCaleb's petition for rehearing that the points raised by him were "in addition" to those which had been raised by the counsel, who conducted the case before judgment. *Vide* also in this connection XIX. La. R. 49; IX. A. 346.

Furthermore if, as is averred, and truthfully av rred, in the petition for rehearing, there was no judgment against the parties applying for a rehearing, but only a void judgment against a dead man, of what *had they* to complain? It would seem that if any party was entitled to complain of this, it was Zunts. Certainly, the counsel who conducted the cause adversely to Zunts in the District Court, and in the Supreme Court up to judgment, never thought it incumbent *upon them* to complain that the only judgment Zunts had recovered was, as to one half of it, at least, a void judgment against a dead man.

And yet counsel for complainant would have the Supreme Court of the United States conclude that the Supreme Court of Louisiana, instead of basing its refusal of a rehearing on such grounds as these, "specially adjudicated" that the doctrine enunciated in Norton vs. Jamison, was "good law and binding on the courts in all cases," except that of W. and H. Stackhouse vs. James E. Zunts, as to which case it *was not* "good law," nor "binding on the courts;" and that, *therefore*, the rehearing was refused.

III.

Even if the judgment against Haywood Stackhouse had

been a valid one, rendered against him in his life-time, no mortgage could result from the *inscription of it after his death;* and the sale of the property of the succession by process of execution from a court of ordinary jurisdiction would be absolutely void, and confer no title on the purchaser.

A judgment in favor of a creditor of a succession, recognizing him as such, gives no mortgage against the succession or the heirs; and if he should record it, he is liable in damages to the parties injured thereby. Waters vs. Mercier, 4 L. 17.

An inscription of a judgment *recovered against a debtor during his life, if made after his death,* does not give rise to any judicial mortgage against the estate. Macauly vs. Bond, 9 L. 354; Succession of Flower, 12 A. 216; Succession of Scott, 9 A. 336.

In Houston vs. Childers, 24 A. 472, it was held by the Supreme Court of Louisiana that the property of a succession can not be seized and sold under a judgment against the deceased owner; and that the sale of property thus situated under execution from the District Court is *an absolute nullity.*

Like the conventional mortgage, the judicial mortgage of Louisiana law has none of the elements of a mortgage about it as this word is understood in English common law jurisprudence. It corresponds rather to the judgment lien of that system. But the lien does not attach as at common law from the rendition of the judgment, or as in many of the States of the Union, from the date of delivery of execution to the sheriff, but arises and attaches solely from the inscription of the judgment in the mortgage office of the parish where the land to be affected lies.

The judicial mortgage of Louisiana law "is that resulting from judgments * * in favor of the person obtaining them." C. C. 3321. "It only takes effect from the day on which the judgment is recorded." C. C. 3322. "Among creditors the mortgage, whether conventional, legal, or judicial, has orce only from the time of recording it." C. C. 3329. The

inscription of mortgages only binds the property when it has been made in the office of mortgages of the parish where the property lies.

A judicial mortgage *exists and has vitality* solely by *inscription.* In the petition of Zunts, in the hypothecary proceeding against the widow and heirs of Haywood Stackhouse, being the same in which the sale to Sawyer was made, it is averred that *by the inscription* of the judgment of the Fifth District Court of the twentieth of February, 1872, in favor of Zunts against W. and H. Stackhouse a judicial mortgage "*was created*" in favor of Zunts against all the property belonging to said William Stackhouse and *heirs of Haywood Stackhouse.* Trans., p. 9.

If there be no inscription, there is no judicial mortgage. It exists only to the extent of the inscription, and *against the parties named* in the record; and third persons are not required to look beyond the judgment, *as recorded*, to the pleadings, in the suit or elsewhere, to ascertain whether the judgment is operative against other parties than those *named* in the judgment as *recorded.*

Ford vs. Tilden, 7 A. 533, was an hypothecary action brought against Tilden as third possessor. He bought the property at a sheriff's sale made upon an execution against Robert A. Hunter. The plaintiff based his action upon a judgment obtained and recorded prior to the sale at the suit of Brown against Griffin, as maker, and Cotton, Robert A. Hunter, Ford, and Solabellos, as indorsers of a promissory note. The court said: "There are various matters set up in the defense, but the only question we deem it necessary to examine is the sufficiency of the inscription. The judgment was recorded in these words: 'John Brown vs. Spencer Griffin *et al.*, Sixth District Court, parish of Rapides. May term, 1840.

"In this case, by reason of the law and evidence, it was ordered, adjudged, and decreed that the plaintiff recover of the defendants *in solido* the sum of $2162 76. * * Done in

open court this 23d of May, 1840. (Signed) George R. King, District Judge, etc."

* * "In the case of Adle vs. Aube, 5 A. 633, we held that the *judicial mortgage exists and has vitality solely by inscription.* If there is no inscription, there is no judicial mortgage. Has this judgment been inscribed, so as to operate a judicial mortgage on the property then owned by Hunter? We think not, because on the face of the inscription Hunter's name does not appear. Spencer Griffin is the only defendant named in the inscription. Who the other defendants were does not appear. *It is true, a person desiring to know who were the other defendants could have ascertained by going to the clerk's office of the District Court; and if he had done so he would there have found their names, and that Hunter was one of them.* But this the public was not bound to do. Jarlroux vs. Duperié, 2 A. 608; Taylor vs. Hotchkiss, 2 A. 917. The inscription of the judgment should have contained on its face information that Hunter was one of the defendants, in order to create a judicial mortgage on his property."

In the case of Norton vs. Jamison, 23 A. 102, already cited, the court said: "Inscriptions of mortgages are *stricti juris*, and must of themselves be complete and give all the information which the law intends to be necessary for third parties. 5 N. S. 112; 7 A. 533. The judgment recorded was against H. R. W. Hill; but plaintiff alleges that H. R. W. Hill died before the judgment was rendered, and claims that its inscription affects the property of J. D. Hill. But the inscription does not contain the name of J. D. Hill. At the time of the rendering and recording of the judgment against H. R. W. Hill the property in question did not belong to him, and no judgment against J. D. Hill was recorded at the date of his sale to defendant; consequently no judicial mortgage attached to the property sold by J. D. Hill to the defendant by recording the judgment in question against H R. W. Hill, rendered after his death." J. D. Hill, it will be remembered, was the sole heir of

H. R. W. Hill, and had made himself party as such to the suit on which the judgment against H. R. W. Hill was rendered. And see, also, in this connection Railroad Company vs. Bosworth, 8 A. 80.

IV.

The complainant, Sawyer, having purchased under a judgment which in so far as it purports to be a judgment against Haywood Stackhouse is *an absolute nullity*, and the inscription of which could operate no judicial mortgage, *has no title* to the undivided half of the property against which respondents are seeking to enforce their mortgage, and is therefore without right or standing in court to inquire into or contest the validity of that mortgage.

"A sale made on a void decree in proceedings of a foreclosure of a mortgage is absolutely void." Rorer on Judicial Sales, § 48; Shelton vs. Tiffin, 6 How. 163.

"A void judgment, order, or decree, in whatever tribunal it may be entered, is in legal effect—nothing. All acts performed under it and all claims flowing out of it are void Hence a sale based on such a judgment has no foundation in law. It must certainly fall." Freeman on Void Judicial Sales, § 2.

"A void judgment is in effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it, and all claims flowing from it, are void. * * The purchaser at a sale by virtue of its authority finds himself without title and without redress. The first and most material nquiry in relation to a judgment or decree, then, is in reference to its validity. For if it be null, no action on the part of the plaintiff, no inaction on the part of the defendant, no resulting equity in the hands of third persons, can invest it with any of the elements of power or vitality."

As the complainant can derive no rights whatever from

the void judgment against Haywood Stackhouse, he can not derive from it the right to restrain by injunction the enforcement of the mortgage held by respondents, nor the right to inquire into the consideration for which that mortgage was granted, nor into the sufficiency of the formalities by which it was accompanied. The judgment under which complainant claims title is null. It is nothing, and being nothing, nothing can be made of it. *Ex nihilo nihil fit.*

As to the respondents, Leng & Ogden, there is an additional reason to preclude the complainant from inquiring into the consideration of the note held by them, afforded by the fact that they acquired it for valuable consideration *before* maturity. Counsel for complainant in their brief in the Circuit Court contended that the holder of a mortgage note is, *quoad* the mortgage, always in the position of a holder after maturity, and the consideration may always be inquired into, and they refer to 29 A. 798 to support them in this assertion. But that authority, Clement & Tremoulet vs. Sigur, does not appear to hold any such doctrine. For it is there held that the consideration of a negotiable note, given by the tutor of the minor as such, on the advice of a family meeting, may be inquired into in the hands of the payee, or of any third person *who has taken it after maturity;* which is only applying the general doctrine of negotiable paper to negotiable notes given by a tutor, with the advice of a family meeting. We are unable, likewise, to perceive what relevancy the cases cited from the 14th and 20th Annua's have to the question; but the cases cited from 17 A. 121 and 8 R. 435 are more in point, and do hold the doctrine contended for by complainant's counsel. But a different doctrine appears to have been held by the Supreme Court in a much later case, Taylor vs. Bowles, 28 A. 294, where the third holder of a mortgage note, taken before maturity, proceeded to enforce the mortgage, an execution was enjoined by the owner of the property upon the allegation of sufficient equities against the original mortgagee, but the court held

that the fact that the notes were held by a *bona fide* holder, who had acquired before maturity, and without knowledge of the equities existing between the prior parties, was sufficient to dispose of the case adversely to the plaintiff in injunction.

As pertinent to the question of consideration, we here refer the Court to Bilgery vs. Ferguson, 30 A. 89, where it is said: "In Brewer vs. Gay, 24 A. 36, it was held, and we think properly, 'that although there was primarily no consideration for the mortgage, yet, it having been made to secure any future holder of the mortgage notes, the moment they changed hands for a valuable consideration the mortgage became valid.'" See, also, to the same effect Richardson vs. Cramer, 28 A. 357.

V.

But even if complainant had shown sufficient title to enable him to contest the validity of the Ernst mortgage, he certainly could not be permitted to do so upon grounds which are purely personal to the minors and married woman in whose behalf and for whose benefit the mortgage was executed. One half of the property mortgaged belonged in her own right to Mrs. Stackhouse, as widow in community, and the other half in equal portions to her four minor children and her daughter, Mrs. Bryant, who was a married woman. Of Mrs. Stackhouse's right to mortgage her interest in the property there can be no question. But complainant avers that as to Mrs. Bryant's interest, though the mortgage was granted by her, duly authorized and assisted by her husband, it is invalid because her interest in the property was paraphernal, and the formalities required by arts. 127 and 128 of the Civil Code were not complied with; and as to the interest of the minors, it is said that the mortgage is invalid by reason of the inobservance of certain formalities with regard to the homologation of the proceedings of the family meeting.

The zeal manifested by the complainant in insisting on the strict observance of all the formalities by which the law of Louisiana seeks to protect the rights of minors and married

women would be more edifying if he did not himself stand in the attitude of one who claims to have wiped out, as with a sponge, by his purchase under the pretended Zunts mortgage, every vestige of such rights on the property.

These formalities, which he is seeking in this suit to make a means of protection not of the minors or married woman, *but of himself*, were never ordained for the protection of such as he, and he will seek in vain to screen himself behind either petticoat or pinafore. He is a man, *sui juris*, and bought the property subject to the Ernst mortgage at his peril.

Such defenses as he seeks to set up would not avail even the married woman or the minors in a direct action by them, or in their behalf, except on condition of their accounting for the benefit derived by them from the contract sought to be set aside, and re-imbursing the moneys which were disbursed for their advantage.

In Mary L. Hardin vs. Wolf and Cerf, 29 A. 334, the Court say: "The first question to which our attention is invited is the effect of sections 981, 983 R. S., and arts. 127. and 128 R. C. C., which are but a re-enactment of the act of 1855, 'to enable married women to contract debts and bind their dotal and paraphernal property, with the authorization of their husbands and of the judge, and upon the certificate of authorization of the latter.'" This is not an open question.

In the case of Rice vs. Alexander, 15 A. 54, it was held "that the law as it stood, in regard to contracts of married women, previous to the act of 1855 referred to, remains unchanged, except that a married woman taking the benefit of this act is placed on the footing of a *femme sole*, and her contract made with the judge's authorization under the statute is sufficient, or in the language of the act 'full proof' against her; while under the general jurisprudence, those who deal with a married woman are bound to see and prove that the contract made with her inures to her benefit."

The formalities which the law has established to protect

minors are *exclusively established for their benefit. If they are omitted, they alone can avail themselves of the omission.* Melançon's Heirs vs. Duhamel, 10 M. 283.

Nullities arising from the inobservance of formalities required in the alienation of the property of a minor can be taken advantage of by himself alone, and may be cured by his ratification, express or implied, when he becomes of age. They are not, therefore, absolute nullities, and if he wishes to take advantage of them he must resort to a direct action before a proper tribunal. Bank vs. Delery, 2 A. 649.

In Rousseau vs. Tete, 6 R 472, the Court said: "The record shows that in the proceedings which preceded the sale, and in the sale itself, were nullities, any one of which would be sufficient to avoid the sale in an action of revendication brought by the minors themselves. * * But the formalities which the law has established for the sale of property belonging to minors, being exclusively ordained for their benefit, the nullities resulting from the omission of some or all of such formalities, are *purely relative, and the minors alone,* when they come of age, *can avail themselves of such nullities.*"

Where there are relative nullities in the settlement of successions, and the disposition of property inherited by minors, *such transactions are, as to third persons, valid,* until set aside. Minors claiming restitution *in integrum* must place matters *in statu quo,* and can not recover the property without refunding the price applied to their benefit. Pondelet vs. Murrel, 9 L. 299; Chambers vs. Wortham, 7 A. 113; Rachal vs. Rachal, 11 A. 687.

VI.

The second point in the second petition for rehearing was then made for the first time. It is altogether untenable. It is contended, "That so far as the heirs of Stackhouse are concerned, the property mortgaged by them to the defendants *was never theirs to mortgage,* but was the property of their father, H. Stackhouse, against whom Zunts had his judgment." It

will be borne in mind that when the Ernst mortgage was granted, Haywood Stackhouse had been dead for several years, and that therefore the property could not have been his at *that* time. "These heirs," the brief goes on to say, "were minors, and they could not accept a succession through their tutrix or by operation of law, except with benefit of inventory (C. C. 352), and that only transferred to them the property of their father after his debts were paid (C. C. 1032, 1054); and it was the duty of their tutrix to administer upon the estate of the deceased and to pay its debts." Trans. p. 181.

The property mortgaged to Ernst & Co. did not belong exclusively to the minor heirs of Haywood Stackhouse. They were the owners of only four tenths of it, the other six tenths belonged--five tenths to the widow in community, and one tenth to the major heir, Mrs. Bryant.

As to six-tenths of the property mortgaged, therefore, nothing said under the second head of the petition for rehearing, which is predicated entirely upon the assumption that property of minors acquired by inheritance, under benefit of inventory, can not be lawfully mortgaged to the prejudice of ordinary debts of the ancestor, can have any application whatever, and yet, *without the assignment of any reason*, the decree appealed from declares the mortgage to Ernst & Co. "null and void," not only as to the four tenths interest of the minors in the property mortgaged, but also as to the interest of Mrs. Stackhouse and Mrs. Bryant!

The assumption in the petition, that property acquired by minors by inheritance can not be mortgaged for their benefit, or only so mortgaged subject to the priority of some sort of tacit and unrecorded mortgage in favor of all ordinary debtors of the ancestor, is not only unwarranted by any thing in the laws or jurisprudence of Louisiana, but is in direct conflict with the textual provisions of our Codes and of the Constitution of the State.

The authorities cited in the court below to sustain the

assumption were Waters vs. Mercier, 2 La. 14; State vs. the Judge of Probates for the Parish of St. John the Baptist, 17 L. 500; Hall vs. Parks, 9 Rob. 140; Parks vs. Patten, 9 R. 169; and Self vs. Morris, 7 R. 24.

These authorities, properly read and understood, do not sustain at all the position contended for, which is not law.

What they do establish is that while the succession from which the minor beneficiary heirs derive the property is *under administration* in the probate court, and until the beneficiary heirs are *put into possession* of the property, it can not be alienated or encumbered by the heirs; but that *after they have been so put into possession it may be* so alienated or encumbered, upon the advice of a family meeting, with the sanction of the judge of the probate court of the minor's domicile.

In Waters vs. Mercier, the first case cited in the petition for rehearing, certain creditors of the father of the minors had, after the father's death, obtained judgment against his succession in the probate court, and had had those judgments recorded in the mortgage office, and claimed that a mortgage resulted therefrom, not only against the property of the minors derived from the father's estate, but against other property of theirs, and the court held that it was "evident that the judgment gave no mortgage *either against the estate or the private property of the heirs.*"

We are at a loss to comprehend how this authority can aid the argument of our learned adversaries. For, according to it, if Zunts, instead of being an ordinary creditor, as they claim, of the succession of Haywood Stackhouse, had obtained judgment *against the succession*, and had that judgment *recorded*, it would not have given him any rights of mortgage, *even against the heirs* themselves, much less against third persons.

The next case relied upon is that of the State vs. the Judge of Probates for the Parish of St. John the Baptist, 17 L. 500.

In that case, the succession of the father of the minor heirs *being still under administration* in the proba e court of the parish of Orleans, the tutor of the minors residing in the parish of St John the Baptist applied to the judge of that parish to convoke a family meeting in behalf of the minors, in relation to the sale of certain property belonging to the succession of the father, still under administration *in the probate court* for the parish of Orleans. The meeting was ordered, convened, recommended the sale of the property, and fixed the terms and conditions. These proceedings were homologated, and application was then made to the judge of St. John the Baptist for an order of sale, which he refused to grant. Thereupon, the case came before the Supreme Court upon application for *mandamus*. The Court said: "Until a succession accepted with benefit of inventory *has been administered* upon and liquidated it must of necessity remain under the control and supervision of the court of probates in which it was opened. * * A change of domicile of the minor heirs, who have only a residuary interest in the succession, can have no effect or influence whatever on the manner of administering it. After its liquidation, should there remain any property which it should not have been necessary to sell for the payment of the debts, *the beneficiary heirs will be put in possession of it.* Any sale that might then become necessary must be authorized and ordered by the judge of the parish of the minors' domicile."

What is here said about the minors' interest in the succession being only residuary has reference evidently to the nature of their interest while the succession is under administration, and *prior* to their *being put into possession* of the property. To characterize the interest of minors in property into the actual possession of which they have been put, after administration upon the succession of the ancestor, as a residuary interest, or otherwise than as absolute ownership, is an utter confusion of ideas.

The next case cited in support of the application is Hall vs. Parks, 9 Rob., where the mother of minor heirs, after the death of the father had forfeited her natural tutorship by marrying a second time, without having a family meeting convoked to advise her retention, and had removed to Mississippi, where her second husband had been appointed by a court of that State guardian of the minors. The case before the court arose out of an attempt by the Mississippi guardian to enforce collection of a twelve-months bond, the property of the succession of the minors' father, *still open*, in the Louisiana court. And the court said: "But the debt to collect which an execution was issued against the plaintiffs, on their twelve-months bond, belongs to the succession of the deceased Tompkins, *which was open in this State*, and which could not be accepted for his minor children but with the benefit of an inventory. C. C. 346. The minors, therefore, being considered as beneficiary heirs, have never acquired that absolute interest in the property of the estate which would place said property under the exclusive administration of their tutor, as all that they would be entitled to after settlement of the estate would be the surplus that would remain after satisfying the debts of the succession."

It is clear that the property referred to in this case likewise was property of a succession still under administration in the court of probate, and of which there had been no putting of the heirs into possession.

Parks vs. Patten, the other case cited from 9 Rob. 160, is a mere reiteration of the foregoing decision, and requires no further notice.

The last case cited in support of the application for rehearing was Self vs. Morris, 7 Rob. 26, which likewise clearly recognizes the distinction upon which we have been insisting, between property of a succession still being administered upon, and property of which the heirs have been put into possession after administration.

The court said: "A natural tutor has by law a right to administer the property of his children without giving security. C. C. 227, 330. These articles upon which the idea seems to be founded that tutors have a right *ex officio* to administer upon successions accruing to their wards, provide only for the administration of the separate and exclusive property of the minors, in which no other persons than themselves have an interest: but when a succession opens in their favor, which, under the law, can not be accepted for them except with the benefit of inventory, it can not properly be said to be their property; and it does not properly *come into their possession* as beneficiary heirs until it has *been administered upon* in due course of law. Whatever remains after the payment of the debts of the estate *belongs to them*, and falls under the administration of *their tutor as such* * *

"When the heirs of a succession, being of age, have accepted it unconditionally, or, *being minors, have come into possession* of it as beneficiary heirs, after the administration of it has legally terminated, they must *be sued in the court of ordinary jurisdiction*, and judgments can be obtained against them *for debts due* by the *succession*"

It is clear from what is here said that there may, in the view of the Supreme Court of Louisiana, be a valid putting into possession of the minor beneficiary heirs of the property of a succession, *although there may be debts of the succession outstanding at the time.* For the court says that *after* such putting into possession creditors may *sue the minors* in the courts of *ordinary* jurisdiction, and obtain judgment against them for debts of the succession. Art. 983, *et seq.*, C. P., provide for the settlement of successions under administration and the enforcement of claims for money against them in the probate courts. The remedies of creditors for the payment of their debts out of the property of the succession are summary and effective. If they choose to allow the estate to be administered upon and the heirs put into possession of the property

without presenting their demands to the probate court, they have no right to complain that their claims are disregarded and the heirs put into possession of the estate without regard to their existence or non-existence. *De non apparentibus et non existentibus eadem est lex.* We have seen that the law still reserves to them the right to sue the minors in the courts of ordinary jurisdiction for the recovery of their debts. But to contend, as must be contended to support the assumption upon which the application for a rehearing was predicated, that *the mere fact of the existence of a debt not made to appear* encumbers the property of the succession with some species of tacit and unrecorded lien or mortgage which will *displace and override all subsequent mortgages*, is a proposition which can not be maintained without ignoring or judicially abrogating the entire body of the laws and jurisprudence of Louisiana pertinent to the matter, and the textual provisions of its Constitution.

Even while the property of a succession, accepted with benefit of inventory, is under administration it is the property of the beneficiary heirs. This is clear from the textual provisions of the Civil Code. "A succession is acquired by the legal heir, who is called by law to the inheritance, *immediately after the death* of the deceased person whom he succeeded" * * * C. C. 940.

"The right mentioned in the preceding article is acquired by the heir by the operation of the law alone, before he has taken any step to put himself in possession, or has expressed any will to accept it. Thus *children* * * * are not the less considered as being seized of the succession, though they may merely be seized of right and not in fact." C. C. 941.

The maxim *la mort saisit le vif* is a rule of our jurisprudence, and the seizin of executors and administrators a fiction of law which does not prevent that of the heir. C. C. 942, 946.

Succession of Duprey, 4 A. 571..

Frazier vs. Hills, 5 A. 113.

O'Donnell vs. Lobdell, 2 L. 297.

When Zunts instituted the hypothecary action against the widow and heirs of Haywood Stackhouse, under which Sawyer asserts title, the heirs were *in possession* of the property, and it was no longer under administration in the probate court. If it had been property still under administration, Zunts would have been compelled to go into the *probate* court to enforce his claim. Instead of doing so, he proceeded *against the minors* in the *District* Court as *third possessors*. See his petition at p. 8 of the transcript.

If the judgment against Haywood Stackhouse was in effect, as is contended, a judgment against his widow and heirs, then the judgment debtor being in possession, instead of proceeding against them as their possessors, Zunts should have taken out a *fi. fa.* against them, directly, under his judgment.

Zunts is no party to *this* suit, and we acknowledge our inability to comprehend how *Sawyer* can base any claim of right on the assertion that at the time of the putting of the heirs into possession of the property Zunts was an ordinary creditor of the succession of Haywood Stackhouse. If Zunts himself were a party here, we do not see how he could claim any benefit from such averment in derogation of our rights of mortgage.

We have shown that as to six tenths of the property the mortgage was granted by majors, and that, therefore, its validity can in no wise be affected by the question as to the right of the tutrix to mortgage the four tenths belonging to the minors. Of her right to do this there can be no question whatever, the minors having already been put into possession of their interest in the property.

It is textually provided in the Civil Code, art. 339, that the immovables of the minor may be alienated *or mortgaged* on the representation of the tutor that it is for the interest of the minor, upon the advice of a family meeting, and with the sanction of the judge of probate of the minors' domicile; and it has been repeatedly held, as shown by the authorities cited

in this brief at pp. , , and , that these formalities are intended for the benefit and protection of the *minor alone*, and that *no one else* can complain, or avail himself of any irregularity in such proceedings.

It was the duty of the tutrix to make the property of the minors productive, and if necessary to borrow money for them for that purpose, and if it could not be obtained except upon mortgage of the property, to execute the mortgage. In Lapeyre vs Weeks, 28 A. 664, the Supreme Court of Louisiana said: "We think the tutrix not only had the right, *but it was her duty*, to obtain supplies and conduct the plantation of the minor as a prudent man would do his own. She had authority of the court to borrow money on mortgage to carry on the plantation. She was enabled to accomplish the object, however, without mortgaging the property of the minor, by obtaining the discount of these drafts on the acceptance of the factors of the plantation. Where the court, on the advice of a family meeting, authorized the tutrix to borrow money to support the slaves and carry on the plantation, and she found she could accomplish the object without mortgage, she not only had the right, but it was her duty, to execute for the minor the less onerous obligation."

In the present case the factors, Ernst & Co., were not willing to make the advances necessary to carry on the plantation, except upon the execution of the mortgage. Upon examination of the records of the recorder's office of the parish of Plaquemines, it was found that the property was unencumbered with any mortgage recorded against the owners of the property, and that the mortgage they would hold to secure their advances would be upon the records of that office the first mortgage. The statutes and Constitution of the State provided that, from the first of January, 1870, there should be in the State of Louisiana *no lien, privilege, or mortgage of any character, except such should appear of record in the recorder's office.* Constitution of 1868, art. 123. Certainly, Ernst & Co.

would never have advanced their money, nor Montgomery nor Leng & Ogden ever have given value for the mortgage notes, if they had supposed for a moment that their recorded first mortgage could be displaced and overridden by a new species of tacit mortgage, never heretofore known to the laws or jurisprudence of Louisiana,not in favor of minors or married women, but in favor of Zunts, an alleged ordinary creditor of the succession of Haywood Stackhouse, whose debt was not of record against the succession, either in the recorder's office or the probate court.

Unless it is claimed that the alleged debt of the succession of Haywood Stackhouse to Zunts is secured by some such novel species of tacit and unrecorded mortgage, following the property into third hands, and displacing all subsequent mortgages, then it is quite immaterial to the discussion of this cause whether the succession of the heirs of Haywood Stackhouse are or were indebted to Zunts or not. Neither he nor they are parties to this suit, nor can it be at all material to its proper determination whether he is an ordinary creditor of theirs or not Ernst & Co. advanced a certain amount of money to the owners of Cedar Grove Plantation, to enable them to cultivate and carry it on, upon a mortgage of the plantation, which, by the records of the recorder's office of the parish of Plaquemines, was a first mortgage upon the plantation. The pretended judicial mortgage against Haywood Stackhouse, under which the plantation was sold to Sawyer, we have shown to be a mere nullity, from which no title could be derived, and by which no valid mortgage could be displaced or overridden.

VII.

The sale to Sawyer was, and is, void; and he acquired no title under it under which to contest the enforcement of the Ernst mortgage, because the sale to him was made in disregard of art. 132 of the Constitution of the State of Louisiana

then in force, and of the provisions of the statutes of the State then in operation to carry that article into effect.

The sale to Sawyer was made on the 28th of April, 1875, and the land sold measured thirty-four and a half arpents by forty arpents. Trans. p. 9.

Art. 132 of the Constitution of 1868 is in these words: "All lands sold in pursuance of decrees of courts shall be divided into tracts of from ten to fifty acres."

If, instead of being incorporated into the Constitution, this requirement had been embodied in an ordinary statute, it appears to us that it would have been the duty of the courts to obey the statute and to see that it was conformed to in all judicial sales made after its passage. Still, it must be admitted that in Bowie vs. Lott, 24 A., the first case which came before the Supreme Court of Louisiana in which it was required to put a construction upon this article, the Court held that the article was rather directory to the Legislature than mandatory to the courts and their officers, and that without the aid of further legislation the article would remain inoperative. With a view to this judicial construction, Act No. 40, of 1869, was passed and carried into the Revised Statutes as sections 3451-52-53-54.

And the 62d section of Act No. 68, of the extra session of 1870, to which we will refer more particularly hereafter, was enacted. With a view to this same judicial construction, a subsequent Legislature, that of 1877, repealed all of these statutory provisions, and substituted no others for them.

And in Morris vs. Womble, Sheriff, 30 An. 1313, decided in 1878, the Supreme Court of Louisiana held, that by the repeal of the statutes referred to the article of the Constitution had again become inoperative.

Bowie vs. Lott, and Morris vs. Womble, whereby the Supreme Court of Louisiana construed an article out of the Constitution by which the Court was established, are not, it must be admitted, without judicial precedents, the most re-

markable of which, perhaps, are the decisions of the English courts upon the Statute of Uses. "By the Statute of Uses," says Lord Campbell, Lives of the Chancellors, vol. 1, p. 488, "it was proposed to confine all controversies respecting land to the courts of common law, by preventing the severance of the legal and beneficial estate; but the conveyancers and judges *repealed the Act of Parliament* by the addition of three words to a deed, so that the doctrine of uses was revived under the denomination of trusts, and a statute made on great deliberation and introduced in the most solemn manner, in the result had little other effect than to produce a slight alteration in the formal words of a conveyance."

But we respectfully submit that these are bad precedents to follow in a land where the sovereign constitution-making power, the ordinary legislative power, and the judicial power should never be confounded.

If constitutional provisions are impolitic or unwise, as we consider the requirement of art. 132 to be, there is a lawful and constitutional method whereby they may be abrogated, as art. 132 has since been in Louisiana. But as long as they are not so abrogated they should be obeyed and respected by the courts. Judge Cooley, in his work on Constitutional Limitations, p. 78, well remarks: "The courts tread upon very dangerous ground when they venture to apply rules which distinguish directory and mandatory statutes *to the provisions of a constitution.*" And at page 82, referring to People vs. Laurence, 186, he says: "We fully concur in what was said by Mr. Justice Emott, in speaking of this very provision, that 'it will be found upon full consideration to be difficult to treat *any* constitutional provision as *merely directory and not imperative.*'"

It has been uniformly held, however, by the Supreme Court of Louisiana that from the time of the passage of the statutory enactments to provide for the enforcement of art. 132 to the date of their repeal in 1877, that is to say, from February 24, 1869, to March 6, 1877, the requirements of the Con-

stitution and the statutes were mandatory and imperative. Lloyd, Ex., vs. Lloyd, Ex., 23 A. 232; Succession of Truxillo, 24 A. 454; Norton vs. Bank, 28 A. 355; Morris vs. Womble, 30 A. 1313.

When the sale to Sawyer was made on the the 28th of April, 1875, the following, among other statutory enactments for the enforcement of art. 132 of the Constitution, was in force; being sec. 62 of act No. 68, of the extra session of 1870. Acts of 1870, p. 142.

"That all lands sold in pursuance of this act, or at any other judicial sale, shall be divided in accordance with art. 132 of the Constitution, * * * and any judicial sale without this division, where the property is sufficiently extensive to admit of such division, *shall be null and void.*"

In French vs. Edwards, 13 Wallace 506, this Court held that where the recitals of a sheriff's deed show that the requirements of the law under which the sale was made have not been complied with, the deed is *void on its face.* The deed to Sawyer shows that the property was sold him to in block, in open disregard of the requirements of the constitution and statutes of the State. Moncure vs. Zunts, 11 Wall. 416.

A sale by the Marshal not conforming in the mode of proceeding in levying the execution and making the sale to the State practice is *irregular and void, and a deed by him in such a sale conveys no title.* Smith vs. Cochrill, 6 Wall. 756.

Sawyer, therefore, stands before the court *with no title* upon which to contest the mortgage held by Montgomery and Leng & Ogden, and to claim the right to restrain its enforcement by injunction.

We respectfully submit that upon all the grounds taken the decree of the Circuit Court should be avoided and reversed, and the bill be dismissed at complainants' costs.

HENRY B. KELLY,
HENRY L LAZARUS,
of counsel.

December, 1879.

UNITED STATES SUPREME COURT.

No. 1016.

IN CHANCERY.

RICHARD MONTGOMERY ET ALS, APPELLANTS,

versus

SILAS W. SAWYER.

Appeal from the Circuit Court of the United States for the Fifth Judicial Circuit and District of Louisiana.

BRIEF FOR APPELLEE.

JOSEPH P. HORNOR,
W. S. BENEDICT.
Of Counsel for Appellee.

NEW ORLEANS, January 3, 1880.

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versus

SILAS W. SAWYER.

Appeal from the Circuit Court of the United States for the Fifth Judicial Circuit and District of Louisiana.

BRIEF FOR APPELLEE.

We prefer to present the facts in this case in chronological order.

I. On the 15th day of February, 1865, William and Heywood Stackhouse executed a mortgage upon certain real property, not in question in this suit, in favor of James E. Zuntz, to secure their notes, amounting to $50,000 00.—See page 116.

II. On the 31st of January, 1867, Zunts instituted suit against William and Heywood Stackhouse, to foreclose that mortgage, and was proceeding to advertise and to sell the property.—See page 114.

III. On the 15th February, 1867, William and Heywood Stackhouse instituted suit against Zunts, and obtained a writ of injunction restraining his legal proceedings to foreclose the mortgage.—See page 121.

IV. Issue having been joined in the injunction suit, judgment was rendered on the 28th November, 1868, in favor of Zunts and against William and Heywood Stackhouse, dissolving the injunction, and with damages; and the Stackhouses appealed.—See page 147.

V. While the appeal was pending in the Supreme Court of Louisiana, on the 18th of December, 1869, Heywood Stackhouse died, and an order was granted in the Supreme Court on the 31st day of May, 1870, making his widow, Sarah F. Brooks, natural tutrix of her minor children, a party to the cause. See page 39. This was in accordance with the rules of the Supreme Court of Louisiana.—See page 98.

VI. On the 27th of May, 1871, the decree of the Supreme Court of Louisiana was rendered, setting aside the judgment and remanding the case to the lower Court for a new trial.

VII. The case was again tried in the lower Court, and on the 20th February, 1872, judgment was rendered in

favor of Zunts, dissolving the injunction and condemning William and Heywood Stackhouse to pay to Zunts twenty per cent. damages on the amount of his mortgage, (see page 154,) and this was in accordance with and authorized by article 304 of the Code of Practice of Louisiana.

VIII. On the 13th of March, 1872, William Stackhouse, Sarah F. Brooks, widow in community of Heywood Stackhouse, deceased, and natural tutrix of her minor children, and the other legal heirs of Heywood Stackhouse, filed a motion for an appeal from said judgment, which was granted. On the same day, the same parties filed a bond for said appeal, which bore their several signatures, for the sum of $30,000.—See page 155.

IX. On the 17th of April, 1872, the judgment in favor of Zunts against the Stackhouses, as above set forth, was recorded in the Parish of Plaquemines, (page 12,) and thus became a mortgage upon all the property of William and Heywood Stackhouse situated in that Parish, (see article 3322 of the Civil Code of Louisiana,) among which was the Cedar Grove Plantation, which is the subject matter of this suit.

X. On the 7th of May, 1872, while this last appeal was still pending, and while the property was so encumbered with the judicial mortgage aforesaid, an act of partition was passed between William Stackhouse and the widow and heirs of Heywood Stackhouse, by virtue of which the latter pretended to become the sole owners of

the Cedar Grove Plantation, (see page 69.) This proceeding was a nullity so far as Zunts was concerned, he having been no party thereto, and the same could not affect his prior mortgage.

XI. On the 29th of January, 1873, a family meeting of the relatives and friends of the minors of Heywood Stackhouse was duly held under the laws of Louisiana, and recommended and advised the Probate Court that the natural tutrix be allowed to act and sign in her said capacity, mortgage notes in favor of Ernst & Co., merchants residing in New Orleans, to the amount of $15,000 00, the payment of said notes to be secured by special mortgage on the said Cedar Grove Plantation. (Pages 63, 64.) No order of Court authorizing this mortgage, as required by the law of Louisiana, was ever issued upon this recommendation of the family meeting, which was never approved or homologated.

XII. On the 6th day of February, 1873, said Mrs. Sarah F. Brooks went before a notary public, and without any order of Court whatever, executed her notes in favor of Ernst & Co., in her official capacity as tutrix, and pretended to give a mortgage upon the said Cedar Grove Plantation to secure the same. In that act of mortgage, she represents herself as appearing in her own behalf and as natural tutrix of her minor children, and she therein alleges "that the Succession of her deceased husband was indebted to Ernst & Co. in that amount of money for value received in plantation supplies, and cash

advances by said Ernst & Co., for the advantage and benefit of the Succession, and the plantation belonging to said Succession known as the Cedar Grove Plantation." (See page 66.) This is the mortgage that the appellants now seek to enforce and the foreclosure of which the appellee has so far successfully enjoined.

XIII. On the 31st May, 1873, the Supreme Court of Louisiana rendered a decree in the case of W. & H. Stackhouse against Zunts, affirming the judgment of the lower Court. (See page 158.) The effect of this decree was to make our judicial mortgage on the Cedar Grove Plantation relate back to the day when the judgment was recorded.—See article 3323 of the Civil Code of Louisiana.

XIV. A rehearing was asked for, (page 159,) but was refused by the Supreme Court on the 15th December, 1873 —Page 170.

XV. On the 20th January, 1875, James E. Zunts entered suit before the District Court for the Parish of Plaquemines against Sarah F. Brooks, widow of Heywood Stackhouse, in her own right and as tutrix, as possessor of the Cedar Grove Plantation, upon his aforesaid judgment, which had become a mortgage by recordation as aforesaid, and caused the sheriff, by proper legal process, to seize and sell the same.—See page 8 et seq.

XVI. On the 28th of April, 1875, the sheriff sold said Cedar Grove Plantation, and Silas W. Sawyer, the appellee, became the purchaser, and immediately entered

in the possession of the same, (page 5 et seq.) and the sheriff, in accordance with his duty, (Code of Practice, article 708,) caused the pretended mortgage of Ernst & Co. to be erased and cancelled.—See pages 107 and 108.

XVII. On the 15th December, 1876, the appellants here filed their bill in the United States Circuit Court for the District of Louisiana, to foreclose the pretended mortgage granted by Mrs. Stackhouse to Ernst & Co. as aforesaid, in which they allege the sale made to Sawyer under the legal proceedings of Zunts to have been valid only so far as one undivided part of the same was concerned, but that the other undivided half was still liable to their mortgage. Thus admitting that the sale to Sawyer was good and their mortgage was invalid as to half of the plantation.—See pages 77, 78, 79.

XVIII. Upon this bill executory process issued, and the plantation was seized by the marshal.—Page 81.

XIX. On the 27th February, 1877, the appellee here brought this suit to enjoin the proceedings of the appellants to sell the one undivided half of the plantation, relying upon his title from the sheriff, hereinbefore set forth.

XX. On the 16th April, 1879, a final decree was entered perpetuating our injunction, declaring the pretended mortgage of Ernst & Co. null and void, and recognizing Sawyer as the legal owner of Cedar Grove Plantation, (184,) and the appellants took this appeal.—Page 185.

I.

In support of Sawyer's title, we have exhibited—

1. A judgment of a competent Court.
2. Execution under that judgment.
3. Sheriff's sale and adjudication, and the sheriff's deed.

"A purchaser of property at a judicial sale is only required to show a judgment of a competent Court, an execution and the deed."

Burke vs. Tregre, 29 La. Ann. 629 et seq.

Bryan vs. Atchison, 2 La. Ann. 463.

The defence urges as its strong point, that the judgment of Zunts affected only the undivided half of Cedar Grove Plantation, which belonged to William Stackhouse, and did not affect the undivided half belonging to the succession of H. Stackhouse. (We desire here to fix the attention of the Court on the admission that *only the undivided half of Cedar Grove belonged to the succession of H. Stackhouse.*) The judgment, it is said, did not affect the portion belonging to the succession of H. Stackhouse, because it was rendered against W. & H. Stackhouse *eo nomine*. As they were plaintiffs *eo nomine*, in the suit of W. & H. Stackhouse vs. Zunts, it is difficult to see how the Court could give judgment *altero nomine*.

The Code of Practice and the rules of the Supreme Court require that in the event of the death of plaintiff or defendant, appellant or appellee, after issue joined, the legal representatives shall be made parties. Nothing more is required. That the legal representative of the deceased

was made a party, is admitted and alleged by both sides. No law requires a change in the title of the suit.

In Bailey vs. Smith, 12 La. Rep. 510, Judge Martin says: "The record shows that an order was made for the revival of the suit, which was served on the administratrix, who was the legal representative of the deceased. * * It was sufficient that she had notice of the suit, and of the order of revival."

In this case, the judgment was against plaintiff and for the defendant *eo nomine*. On this question it has become the settled jurisprudence of the State. In 6th La. Ann. 704, Smith vs. Nicholson et al's. (another *eo nomine* judgment,) the same doctrine is affirmed, and re-affirmed by direct reference, in Howard vs. Copley, 10 La. Ann. 505. If the judgment against H. Stackhouse was good against his succession, (and we think this cannot be questioned in the face of the authorities cited,) certainly its registry binds the property of his succession. It would seem that the notary who drew the act of mortgage under which defendants claim knew this much law, if the mortgagees did not. In the act, he, to avoid responsibility, makes Mrs. S. F. Stackhouse declare that there are no mortgages on Cedar Grove in the name of her deceased husband, Heywood Stackhouse. See Exhibit F, page 40, and especially the last clause in the act, at foot of page 42. Same exhibit shows that the mortgage to Ernst & Co. was given in April, 1873, nearly a year after the registry of Zunts' judgment.

It should be remembered that, in this case, W. & H.

Stackhouse, and all the subsequent parties to the suit, were PLAINTIFFS, endeavoring to defeat Zunts in the prosecution of an honest claim, and not persecuted defendants. If there was any irregularity or cause of nullity in the judgment of Zunts, it could only be taken advantage of by the heirs or creditors of Heywood Stackhouse. The heirs acquiesce through their tutrix. H. Stackhouse has no other creditors. The creditors could, in such a case, demand restitution from Sawyer only on refunding to Sawyer the amount paid for the place, since it went to the discharge of their ancestor's debt.

8 N. S. 625, Daquin et al. vs. Coiron et al.

6 N. S. 684, Daquin et al. vs. Coiron et al.

3 La. Rep. 544, Elliott et al vs. Labarre et al.

II.

Appellants rely greatly upon the case of Norton vs. Jamison, 23 La. Ann. 103; but it must be noticed that in that case, the party against whom judgment was rendered *died before issue joined*, a very different case to the one at bar.

In this case, however, the matter is *res adjudicata;* that point and defence was duly raised before the Supreme Court of Louisiana by counsel for the widow and heirs of Heywood Stackhouse, and duly passed upon by said Supreme Court, that tribunal refusing to hold that the judgment against Heywood Stackhouse was a nullity, after their attention had been particularly called to the fact that

he was dead before the Court lost control over the judgment; before it became final between the parties to it.

The record in the case of Stackhouse vs. Zunts has been offered in evidence in this case, and from it, it appears that after the final decree of the Supreme Court affirming the judgment against W. and H. Stackhouse, *in solido*, had been rendered, (page 158,) a petition for a re-hearing of the case was filed by counsel on behalf of the widow and heirs of Heywood Stackhouse, (page 159,) in which he urged the nullity of the judgment against them, they not being parties to either the judgment or the suit, and asked to have that nullity declared by the Court on that ground; that petition was filed on the 1st day of November, 1873, and the Supreme Court held it under advisement until the 15th day of December, 1873, when it rendered judgment refusing the re-hearing prayed for, (page 170,) and consequently refused to decree that the judgment was a nullity as against the widow and heirs of H. Stackhouse, and consequently, also, declared that it was a good judgment as to them, because they were on the record as appellees from it.

That petition for rehearing is included in the record, to which we beg to call the attention of the Court, from page 162 to page 169; it will be seen that the point here at issue is sharply made in several places. We quote:

"All the proceedings, trial and judgment took place, notwithstanding the death of Heywood Stackhouse, against him, *eo nomine*, and in no wise against us, his heirs or representatives."—Page 167, line 6.

"But Zunts was seeking no such end; he was trying the case against a dead man only. We have a right to say so, for he proceeded to obtain a judgment against that dead man, and was content. He made no attempt whatever, to obtain a judgment against us, *nor has he*, in fact, obtained one."—Page 167, line 19.

"You have only affirmed a judgment rendered against the dead man, after his death; and we stand before you only as third parties who have appealed from a judgment rendered against another."—Page 167, line 24.

"There is no judgment against us.—Page 167, line —5.

Now, upon this petition your Honors will see that all the law relied upon by our opponents, and all the authorities quoted by them, were used by their counsel to have the judgment declared a nullity as against the widow and heirs of H. Stackhouse, and even the case of Norton vs. Jamison was relied upon and quoted: (page 164:) but the Supreme Court refused to declare the judgment a nullity as against said widow and heirs, and hence declared that it was good as against them. And this judgment of the Supreme Court refusing to decree the nullity of said judgment as against said widow and heirs is final as against them, and has the force of *res adjudicata;* for they could not, after having put such pleadings on record, bring an action of nullity on the same grounds.

Code of Practice, 609.

Bigelow on Estoppel, pages 24, 25.

We submit that if the judgment is a final and effective one as against the widows and heirs of H. Stackhouse, as

our Supreme Court have decreed it is, it is final and effective as to their property when duly recorded, and there is no question that that has been done.

The authority of Norton vs. Jamison, and the doctrine there enunciated may remain as good law and binding upon the courts in all cases but *this*, which, as we have shown, has been specially adjudicated otherwise.

The equities are entirely with complainant It is shown Zunts' judgment was duly recorded before respondents' alleged mortgage was made. They are therefore properly and legally chargeable with full knowledge thereof, and could take no rights or actions to the prejudice of Zunts, whereas they here attempt to avail themselves of their own laches, profit by their knowledge of Zunts' debt, and seek equity to consummate their illegal plan of evading the same, *which their authors could not do*, on account of the judgment of the Supreme Court against them on their application for a re-hearing.

Even were it the case, Zunts' judgment was not recited on the certificate of mortgages when they pretend to have made their advances, they are bound by the recordation, with recourse against the mortgage officer for his neglect. But as we have seen, they did have notice, because they stipulated for a certificate in name of Succession of Heywood Stackhouse, and that shows Zunts' mortgage.

III.

A great deal of stress is laid by the appellants upon

the fact that in the certificate of mortgage of the 14th of February, 1873, the day when the Ernst mortgage was recorded, there does not appear any rehearsal of the mortgage resulting from the judgment obtained by Zunts against William and Heywood Stackhouse, (page 65,) but that certificate shows that it is given in the name of Widow Sarah F. Stackhouse only. And in the act of mortgage to Ernst & Co., it will be seen that the mortgagees exacted the following stipulation: "And now the said Mrs. Sarah F. Stackhouse, declaring that no mortgages stand recorded against the herein mortgaged property, either in the name of *her deceased husband* or in her name, or in the name of Mrs. Lillia Bryant, (the heir of age,) or in the name of any of said minors, binds and pledges herself to produce to me, notary, within thirty days from this date, a duly authenticated certificate from the Recorder of the Parish of Plaquemines showing that *in the names of the parties above referred to* no mortgage or incumbrance stands recorded against the herein mortgaged plantation at this date."—See page 68.

Now if this stipulation was complied with, and those certificates called for were furnished by Mrs. Stackhouse, they would undoubtedly have shown the existence of Zunts' mortgage, and would have been a full notice to Ernst & Co. of the existence of the same. In fact, under Louisiana law, the record itself was notice to them without certificate. If she did not furnish this certificate as stipulated, then Ernst & Co. deliberately waived the same,

and thereby held their mortgage subordinate to that of Zunts.

By reference to the accounts on pages 95, 96, 103, 104, 105 and 106, it will be seen that the larger portion of the advances claimed to have been made by Ernst & Co. were made after the thirty days from the date of execution of their mortgage, when if their stipulation had been insisted upon they would have had actual notice of Zunts' mortgage, and that all advances made by them after that time were made with the full and absolute knowledge that Zunts held a mortgage on the property which primed theirs.

Another significant fact in this connection, is the declaration made in the Ernst mortgage (page 66.) "That whereas the succession of her *deceased husband*, Heywood Stackhouse, was justly and truly indebted unto the commercial firm of Ernst & Co., in the full sum of $15,000 00 for value received in plantation supplies and cash advances by Ernst & Co., for the advantage and benefit of said Succession, and the plantation belonging to said Succession known as the Cedar Grove Plantation, etc."

Now, in truth and fact, this was all false, for it seems that Ernst & Co. did not know Heywood Stackhouse! Frederick Ernst, one of the firm of Ernst & Co., declares on the witness stand: "The mortgage was to secure any cash balances which might be due Ernst & Co., during the time they did business with the plantation, or which might be due in final settlement. At the time of the death of Heywood Stackhouse he did not owe him

anything. I did not know him. I never saw him." (See page 86.) And an inspection of the accounts will show that if Mrs. Stackhouse owed Ernst & Co. anything on the mortgage notes in question, it was for supplies furnished, and advances made subsequent to the date of the mortgage, and subsequent to the lapse of the thirty days stipulated for, within which the mortgagor, (Mrs. Stackhouse,) was bound to produce a certificate of mortgages standing recorded against her deceased husband, amongst which was the mortgage of Zunts, under which the appellee here acquired title.

We have shown that the mortgage of Ernst & Co. was an absolute nullity, and the fact of its being an absolute nullity can be pleaded and urged by any one.

It is true that Mrs. Stackhouse applied for and obtained an order from the proper Probate Court, authorizing the holding of a family meeting to deliberate on the advisability of mortgaging this property, belonging to her minors. This was necessary under article 339 of the Civil Code of Louisiana, which provides: "The immovables of the minor *cannot be alienated nor mortgaged* unless on the representation of the tutor, that it is for the interest of the minor, that these objects, or a part of them, should be sold or mortgaged, a family meeting duly assembled shall declare that the sale or mortgage is of absolute necessity, or of evident advantage to the minor."

So far the proceedings were in strict accordance with law. The family meeting was held, as we have seen. It advised the Court to authorize the tutrix to grant the mortgage,

but the proceedings of that family meeting were never homologated and approved by the Court and no order authorizing the tutrix to grant such a mortgage was ever rendered, and consequently her proceeding without such an order was as if she had done nothing at all for all these other things were necessary in order to enable her to grant a valid mortgage as provided by article 340 of the Civil Code, which reads as follows:

"In case the family meeting consider the sale or the mortgage to be advantageous to the minor, it shall set forth the reasons of its determniation, *in order that the judge may decide* whether he ought to cause it to be homologated or not, and shall also fix terms of credit on which the property shall be sold, and the other conditions of the sale, if the case requires it."

See also article 353, which says:

"The tutor cannot borrow for the minor, purchase for him immovables, or compromise respecting his rights, *without an authority from the judge* granted on the advice of a family meeting."

It has been held repeatedly by the Supreme Court of Louisiana that any one who lends or advances money to a tutor on account of his ward, unless the tutor acts within the limits of previous legal sanction, does so at his peril.

See Miltenberger vs. Elam, 11 La. Ann. page 677.

See Payne vs. Scott, 14 La. Ann. 760.

The act of mortgage in favor of Ernst & Co., now held by appellants, and upon which they rely, imports a con-

fession of judgment by the mother of the minors in her capacity as tutrix, and is therefore absolutely null. "A confession of judgment made by a mother. in her capacity as tutrix of her minor child, is not binding on the minor or his property."

Metcalfe vs. Alter, 31 La. Ann. 389.

"The widow in community cannot, while the succession is still under administration, and *before its debts are paid* and her residuary interest thus definitely ascertained, execute a valid mortgage on her undivided half of any specific property of the succession."

Cestac vs. Florane, 31 La. Ann. 493.

In this case Sawyer purchased the Cedar Grove Plantation at the regular sale made at the instance of the creditor holding the first mortgage lien against the property. He purchased the property for a sum not sufficient to pay that first (Zunts') mortgage. It hence became the duty of the sheriff in giving him his title to give it to him free of all incumbrances, and if there were found to be any other incumbrances, inferior in rank to that under which the property was sold. to cause those incumbrances to be erased from the records.—See article 708 Code of Practice.

Acting under this authority, the sheriff in his official capacity directed the recorder of mortgages to cancel the mortgage given by Mrs. Stackhouse to Ernst & Co., as being inferior in rank to that of Zunts, and in pursuance of that authority the recorder did cancel and erase that mortgage. (See Record, pages 107, 108.) Sawyer then

with a complete and clear title to the Cedar Grove Plantation, entered into possession of and cultivated and enjoyed it as his own for some time, and until he was attacked by the proceedings taken by the appellants in this case.

The question then reduces itself to one of ownership, and the same questions arise as would in a petitory action under the laws of Louisiana, and the appellants' are the real plaintiffs in the action, while Sawyer is the defendant protecting himself under an equitable writ of injunction, which was the only available defence he had. The appellants then being plaintiffs, are bound to make out their case. They must recover on the strength of their own title, not on the weakness of ours, and this doctrine has been laid down in the jurisprudence of Louisiana since its commencement.

See Hart vs. Foley, 1 Robinson, 378.
McMaster vs. Stewart, 11 La. Ann. 546.
Brack vs. Wood, 11 La. Ann. 512.
Pritchard vs. Coyle, 22 La. Ann. 57.

Appellant's title or mortgage having been shown to be a mere nullity, the Court does not need to enquire into the validity of Sawyer's title.

VI.

On another point the appellants hope to succeed, by averring a flaw in *our title*. They plead that the sale under Zunts' mortgage to Sawyer was a nullity, because the plantation was sold in block, and not divided into lots, as

required by article 132 of the Constitution of Louisiana of 1868.

There is as little force in this as in their other pretensions. The Supreme Court of Louisiana, in the case of Bowie vs. Lott, 24 La. Ann. page 214, says that article 132 of the Constitution is not self-acting and can only affect in manner and to the extent provided for by statute. The only statute ever adopted to enforce article 132 was the statute of 1869, now comprised in sections 3756, 3757, 3758 and 3759 of the Revised Statutes of Louisiana, and the last named expressly provides that the law was only to apply to sales made and predicated on contracts entered into after the date of the adoption of the Constitution of 1868, and this proviso was held to be constitutional by the Supreme Court of Louisiana, in the case of Bohn vs. Bossier, 29 La. Ann. page 144.

Reference to the record shows that Zunts' judgment was predicated upon a contract of mortgage entered into on the 15th February, 1865, three years before the adoption of the constitutional provision invoked by the appellants.—Page 116.

The Supreme Court has decided directly on the point in Duckworth vs. Payne, 26 La. Rep. 683, where it held that a sale made on a mortgage contract created before the provisions of the Constitution in regard to dividing lands into small lots cannot be affected by it.

The act of 1869 was repealed by the act of 1877. (Page 33.) The constitutitonal provision itself was repealed by the Constitution of 1879, now in force in Lou-

isiana, so it would be of no avail for your Honors to remand the case on that point.

Appellants have not shown or alleged that they have been injured by the sale in block to Sawyer, or that they would be benefitted by a new sale to be made in parcels; and the law of Louisiana is well settled that a property once sold under order of Court will not be ordered to be resold without such allegations.

Howard vs. Schmidt, 29 La. Ann. 129.

Wederstrandt vs. Marsh, 11 R. 533.

Lewis vs. Gordy, 5 La. Ann. 570.

Rightor vs. Slidell, 9 La. Ann. 602.

In the same connection it must be observed that appellants have really no interest in the plantation whatever, for by their own showing it appears from the mortgage certificate, in the name of Mrs. Stackhouse only, produced by them (page 65) as the one under which they took their mortgage, that there was a mortgage upon the property in advance of theirs against Mrs. Stackhouse, and in favor of her minor children, for $127,314 00; and it is not pretended that the sale to Sawyer was not for a fair price: and as we have seen that that price was insufficient to pay off even Zunts' mortgage; the fact is demonstrated that even if the appellants were allowed to foreclose upon their mortgage, they could not possibly have sold the plantation for enough to allow them to receive anything after the payment of this large mortgage in favor of the minors.

VII.

Some stress is laid by the counsel for appellants upon the fact that some of them were owners of some of the mortgage notes before maturity. There is no force in this position. The negotiability of a note secured by mortgage is not restricted, but the mortgage given to secure the note does not partake of this negotiability.

A mortgage cannot be transferred to a third person so as to give him any geater right than the mortgagee himself possessed.

See Schmidt vs. Fry, 8 Robinson, 435.
Bowman vs. McElroy, 14 La. Ann. 587.
Noll vs. Rizzoti, 20 La. Ann. 263.
Clement vs. Sigur, 29 La. Ann. 798.

VIII.

It is admitted by the appellants in their bill, that so far as Zunts' mortgage was concerned, only one-half of the plantation belonged to the succession of Heywood Stackhouse, while it is clear from the accounts furnished and filed by the appellants, on pages 92 to 96, and 102 to 106, that supplies furnished by Ernst and Company under their mortgage was money which went to the benefit of the whole place. And it cannot be denied for an instant that any mortgage granted by a tutrix on minors' property, to cultivate or improve the property belonging wholly or in part to a stranger, would be an absolute nullity.

Miltenberger vs. Elam, 11 La. Ann. 667.

Urquhart vs. Scott, 12 La. Ann. 674
Payne vs. Scott, 14 La. Ann. 760.

IX.

So far as the heirs of H. Stackhouse are concerned, we contend that the property mortgaged by them to the appellants was never theirs to mortgage, but was the property of their father, H. Stackhouse, against whom Zunts had his judgment. These heirs were minors, and they could not accept a succession through their tutrix or by the operation of law, except with the *benefit of inventory*, (C. C. 352,) and that only transferred to them the property of their father after his debts were paid, (C. C. 1032, 1054,) and it was the duty of their tutrix to administer upon the estate of the deceased and to pay its debts.

See Waters vs. Mercier, 4 La. Rep. 14.

It is admitted that Zunts was at least an ordinary creditor of H. Stackhouse for the amount of his judgment: then we contend that the minor heirs of Stackhouse never became the owners of the plantation in question, and consequently, never could have mortgaged it to appellants; being only beneficiary heirs, they took from their father's succession only what was left after the payment of his debts, and as the debts have never been paid, as is in evidence here, and from the fact that Zunts has not yet been paid in full, it follows that the minor heirs took nothing, and that the pretended mortgage made for them by their tutrix is an absolute nullity—worth no

more than a mortgage given by Smith upon the land of Jones.

This has been frequently held by our Supreme Court to be good law. In the case of State vs. Judge of Probates for Parish of Ste. Jean Baptiste, 17 Louisiana Reports, 500, the relator was a tutor of minor children, and prayed for an order to sell some of their property, which sale had been recommended by a family meeting; the judge refused to allow the sale, and the relator asked for a mandamus to compel him to permit it; the Supreme Court declined to issue the writ, and said: "Until a succession, accepted with the benefit of inventory, has been administered upon and *liquidated*, it must of necessity remain under the control and supervision of the Court of Probates of the parish in which it was opened."

No one will deny that it is the duty of the Court of Probates to see that the debts of the deceased are paid, before allowing mortgages to be made upon his property to pay debts of his living children, contracted since his death.

In the case of Hall vs. Parks, 9 Rob. Rep. 140, (foot of page,) the Supreme Court say: "The minors, therefore, being considered as beneficiary heirs, have never acquired that *absolute interest* in the property of the estate which would place said property under the exclusive control and administration of their tutor, as all that they could be entitled to, after settlement of the estate, would be the *surplus that might remain* after satisfying the debts of the succession."

It was no *surplus* of the estate of their father which was mortgaged for the benefit of the minors Stackhouse, for their father's debts remained unpaid.

And in the case of Parks vs. Patten, 9 Rob. Rep. 169, they again say: "Whenever a succession is accepted with benefit of inventory, it is to be *administered* under the authority of the Court of Probates."

It is plain that the word "administered" does not mean that the property of the succession can be mortgaged to pay present and future debts of the heirs, before the creditors of the succession are paid.

"As a succession opened in favor of minors can be accepted for them only with benefit of inventory, it cannot be said to be their property, *and does not legally come into their possession until it has been duly administered*, when whatever may remain after payment of debts will fall under the administration of their tutor."—Self vs. Morris, 7 Rob. Rep. 24.

"Whenever a succession is accepted with benefit of inventory, and minors cannot accept in any other way, it must be *administered* as a vacant estate."—Self vs. Morris, 7 Rob. Rep. 24.

Thus we show that appellant's mortgage is an absolute nullity so far as the minor heirs are concerned—for the same reasons it is equally so as to the major heir, and the Supreme Court of Louisiana has decided that a mortgage given by a widow in community is equally invalid, null and void.

Cestac vs. Florane, 31 La. Ann. 493.

X.

Counsel for the appellants state in their brief at the foot of page 20, that the reasons for the decree of the District Judge who tried this case in the Circuit Court was that "the ordinary creditor of the succession has a tacit lien or mortgage on the property of the succession which will displace or override any subsequent alienation and incumbrance of it, and that as to such ordinary creditor any subsequent mortgage of the property is void." That was not exactly the reason given for the judgment; as we understood, it was thus: "That appellants' mortgage was a nullity; that the property of the succession is the common pledge of the creditors except in so far as privileges have been *lawfully acquired;* and that it was out of the power of the widow in community, the tutrix of the minor heirs, or the heirs themselves, to mortgage property belonging to an unliquidated succession to the prejudice of the ordinary creditors of the deceased."

See Civil Code of Louisiana, art. 3183.
Boyce vs. Escoffie, 2 La. Ann. 872.
Succession of Hawkins, 2 La. Ann. 923.
Granet vs. His Creditors, 15 La. Rep. 122.

We pray that the decree be affirmed.

Respectfully submitted,

JOSEPH P. HORNOR,

W. S. BENEDICT.

Of Counsel for Appellee.

NEW ORLEANS, January 3, 1880.